

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 1853 OF 2019

Kiran Namdev Shinde ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Satyam H. Nimbalkar a/w. Rohan Hogle, Advocate for the Applicant.
Smt.A.A. Takalkar, APP, for the Respondent-State.

Mr. M.A. Pawar, PI, Indapur Police Station, Pune (Rural) is present in the Court.

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CORAM : SARANG V. KOTWAL, J.

DATE : 25th SEPTEMBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R.No.1016/2018 registered at Indapur Police Station under Sections 302, 307, 120B, 341, 143, 147, 148, 149, 506 read with 109 of I.P.C.

2. The applicant was arrested on 11.12.2018 and since then he is in custody. The investigation is over and the charge-sheet is filed. There are in all 12 accused and the applicant is accused No.2.

3. The case pertains to the murder of one Balu Shelar. The

incident had occurred on 9.12.2018 at around 6:30 p.m. at Saraswati Nagar in front of I.T.I., Indapur. The FIR is lodged on the same day by one Pravin Shelar, the brother of the deceased. He has stated in the FIR that in July, 2018 there was a serious quarrel between informant and deceased on one hand and the accused in this case Sumit Jamdar and others on the other hand. Sumit's close relative Somnath was seriously injured in the incident and he was in coma for a few days. Therefore, the accused Sumit Jamdar was threatening the deceased and was demanding Rs.10 Lakhs to cover the medical expenses of Somnath. On 9.12.2018, the informant and his brother Balu had attended their business at Hotel Nanashree. Between 1:00 p.m. to 2:00 p.m., the informant had seen the accused Sumit Jamdar and Rahul Jamdar moving around in front of their hotel. The deceased Balu had left the hotel with his employee Javed Shaikh to go to Indapur market to purchase vegetables. At 6:30 p.m., Javed Shaikh telephonically told the first informant that Sumit Jamdar and 4-5 others had assaulted Balu with deadly weapons and even he was assaulted. The informant immediately rushed there and saw that his brother was lying injured at the spot. He was moved to Government

Hospital at Indapur, but, was declared dead before admission. On this basis, FIR was lodged.

4. The investigation was carried out. The applicant was arrested on 11.12.2018 as mentioned earlier. The prosecution story is that the applicant and four others had kept watch on the movements of the deceased. The accused Sumit Jamdar, Rahul Jamdar, Balu Bansude, Nilesh Bansude, and two others actually assaulted the deceased with deadly weapons. The deceased had suffered five incised wounds. On the head there was a fracture of skull and the cause of the death was mentioned as 'death due to hemorrhagic shock due to multiple injuries over head and neck region.' The injured Javed had suffered one abrasion and one CLW. The CLW was on the head and it was described as a grievous injury.

5. Heard Shri. Satyam Nimbalkar, learned Counsel for the applicant and Smt. A.A. Takalkar, learned A.P.P. for the State. Learned Counsel for the applicant submitted that the prosecution case is not that the applicant was one of the assailants. The only allegation against him is that he had kept watch on the movements

of the deceased. There is a vague reference of him being present when the conspiracy was hatched. However, both these circumstances are not supported by sufficient material even at this stage. He, therefore, submitted that the applicant deserves to be released on bail.

6. Learned A.P.P. pointed out that there are two witnesses who had seen the applicant outside the hotel of the deceased and he had left that place after the deceased had left his hotel at around 5 O’Clock in the evening on that date. She submitted that the injured witness Javed had stated in his statement recorded under Section 161 of Cr.P.C. that he had seen the applicant just prior to the incident as he had overtaken their car. He, therefore, submitted that at this stage complicity of the applicant is made out.

7. I have considered all these submissions and I have also perused all the statements referred by learned Counsel for both sides. The statements of the witness Javed are important because he was the injured eye witness in this case. His statement under Section 161 of Cr.P.C. was recorded on 19.12.2018. Learned Counsel for the applicant submitted that all the statements against

the present applicant are recorded at least a week after his arrest. In his statement before the police, Javed has stated that at around 6 O'clock after marketing he and the deceased had started going to the house of the deceased. At that time, the applicant saw them and over-took them. Javed himself and the deceased went ahead. After some time they were intercepted by a Scorpio car. The assailants, named above, alighted from the car and assaulted the deceased with weapons like axe, sickle, wooden stick etc. Even he was assaulted.

8. His statement recorded under Section 164 of Cr.P.C., however, makes no reference to the applicant's name and he has not stated that he had seen the applicant overtaking them before the incident.

9. There are two more eye witnesses i.e. Shivaji Suryawanshi and Shivaji Jadhav. They had seen actual assault and their statements are restricted to assault caused by actual assailants. They did not make any reference to the applicant. As pointed out by learned A.P.P. there are two witnesses, namely, Deepak Gole and Rahul Devkar, who had stated that they had seen

the applicant sitting in front of hotel of the deceased and leaving at 5 O'clock after the deceased had left the hotel. The prosecution wants to suggest that the applicant was keeping watch on the movements of the deceased. As far as conspiracy is concerned, there is a statement of one Navnath Mane. Even his statement was recorded on 18.12.2018 i.e. after a week of arrest of the applicant. He has stated that on 9.12.2018 he was doing some labour work in the house of Sumit Jamdar. At about 3:00 p.m. when he was present on the first floor, he had seen the applicant, accused Rahul Jamdar, Amit Jamdar, Nilesh Bansude, Balu Bansude, Nitin Jamdar, Anna Bhosale, Kedar Jadhav and other 2-3 persons. Sumit Jamdar was telling others that they must eliminate Balu Shelar on that day itself. When this witness came down, all of them stopped discussing.

10. This is, in short, is the evidence against the present applicant in the charge-sheet. As rightly pointed out by learned Counsel for the applicant all these statements against the applicant are recorded at least a week after his arrest.

11. Those two witnesses who had seen the applicant near

the hotel of the deceased merely say that at 5 O'clock, the applicant had left that place, however, there is no connecting material to show that thereafter the applicant had alerted the actual assailants about the movements of the deceased. The CDR of the applicant's mobile-phone shows that at 6:37 p.m. he had received a call from Amit Jamdar. He himself had not called any of the assailants. The CDR in fact shows that the applicant had not made any call between 5 O'clock and the time of incident. There is no material to show that the applicant had contacted any of the assailants or other conspirators to alert them about movements of the deceased.

12. The statement of the witness Navnath Mane is equally innocuous as far as the applicant is concerned. This witness has merely stated that the applicant was present when the main accused Sumit Jamdar was telling others that the deceased should be eliminated on that day itself. There is nothing to show that the applicant had taken any steps towards executing the conspiracy hatched by other accused.

13. In this view of the matter, considering this weak nature

of the evidence against the applicant and also considering the fact that he is in custody since 11.12.2018, I am inclined to grant bail to the applicant. Hence, the following order :

ORDER

- (I) The applicant is directed to be released on bail in connection with C.R. No.1016/2018 registered at Indapur Police Station, on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned police station once a month for a period of one year from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)