

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1942 OF 2019

Jaideep Shyam Ombase	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Niranjan Mundargi i/b. Mr.Omneel Jadhav, Advocate for the Applicant.

Mrs.Geeta P. Mulekar, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 04, 2019.

P.C. :

The Applicant is seeking bail in connection with C.R.No.I-133 of 2015, registered with Shrinagar Police Station, Thane, for the offence punishable under Section 302 read with 34 of Indian Penal Code ("IPC", for short). Applicant was arrested on 26th May, 2018.

2 First Information Report ("FIR", for short) was lodged on 1st May, 2015, by the police constable against unknown person alleging that three persons had assaulted deceased by wooden logs. The name of the deceased was Damodhar Padala.

Statements of eye-witness Vijay Soni and Umesh Vishwakarma were recorded on 1st May, 2015. On completing investigation, charge-sheet was filed. Some of the accused were arrested. They were tried before the concerned Court. One of the accused who was convicted forwarded a letter from jail on 25th May, 2018, stating that one absconding accused referred to as Bender is involved and the name of the said person was Jaydeep Shayan Ombase alias Bender. Immediately, thereafter the applicant was arrested and since then he is in custody.

3 After the arrested of the applicant, the investigating machinery recorded statements of three witnesses viz. Smt.Padmavati Padala, Ganesh Padala and Sagar Shinde. The said witnesses are mother and brother of the deceased and friend of applicant. Smt.Padmavati has stated that her son was murdered in 2015 and two persons were arrested in the said case. She further stated that the third person was involved in the said murder was named as Bender. She learnt the said fact from police. She was shown photograph and she stated that the photograph is of Jaydeep Umbase alias Bender who was residing in her area. Similar statement was made by Ganesh Padala, brother of deceased. Sagar Shinde stated that applicant is also known as Bender. These statement was recorded on 18th August,

2018. In the earlier charge-sheet filed against the other accused there is reference of person named Bender involved in crime. However, since 2015, applicant's involvement was not disclosed.

4 Learned Counsel for the Applicant submitted that the prosecution is relying upon the statement of co-accused who has been convicted and proceeded to investigate the case. Statements were recorded after the period of about three years. In pursuant to the arrest of the Applicant, supplementary statements of the alleged eye witnesses were not recorded and there is no identification that the Applicant was the person of one of the assailant in the offence which took place in 2015, causing murder of the deceased Damodhar Padala.

5 Learned APP submitted that the statements of three witnesses referred to herein above show the involvement of the applicant. The applicant is known as Bender and he was absconding. The eye-witnesses referred to involvement of three persons. The memorandum statement of the accused refers to name of Bender. The Applicant is involved in about seven cases. The Applicant is habitual offender. Hence, bail may not be granted to him.

6 On perusal of documents on record it can be seen that the FIR was registered in the year 2015. The case of the prosecution is that accused was involved in assaulting the deceased. Statements of eye-witnesses were recorded. The co-accused were prosecuted. After the conviction of the co-accused, he had forwarded the letter stating that the third person is Bender disclosing involvement of the Applicant. The statements of the three witnesses referred to above were recorded after a period of three years. The mother of the deceased has stated that the applicant is the person from the same area. The said version was made on the basis of photographs shown to her. Similar version is deposed by the brother of the deceased. The third witness is the friend of the applicant who stated that the applicant is known to Bender. Learned APP, on instructions submitted that in previous cases registered against the Applicant, he has not been named as Bender. The subsequent statement of the eye witness could not be recorded, after the arrest of the applicant, as they are not available. Thus, apparently there was no identification of the applicant, by eye witnesses as assailant. The third person was involved in the case was undisputedly unknown person. Thus, there is no cogent evidence to establish that the Applicant is the person who was one of the assailant

involved in assaulting the deceased. In the circumstances, case for grant of bail is made out.

5 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1530 of 2019, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.I-133 of 2015, registered with Shrinagar Police Station, Thane, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall attend concerned police station once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) It is clarify that the observations made in this order are only for considering the application for bail and trial Court shall not be influenced by the same;

(v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)