

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

CRIMINAL BAIL APPLICATION NO. 1888 OF 2018

Vishwanath @ Jeeva Nagnath Bhosale

... Applicant

Vs.

State of Maharashtra

(Through Tilak Nagar Police Station)

... Respondent

...

Mr. Niranjan S. Mundargi I/by Mr. Sachin B. Thorat for the applicant.

Mr. R.M. Pethe, APP for the Respondent-State.

Mr. P.S. Ghadge, PSI, Tilaknagar Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th JANUARY, 2019.

P.C.

1. The applicant is seeking bail in CR No. I-165 of 2017 registered with Tilak Nagar Police Station for the offence punishable under Sections 302, 143, 147 149 of Indian Penal Code. The applicant was arrested on 27th December, 2017. First information report was lodged on 17th December, 2017.

2. Case of the prosecution is that FIR was lodged by the wife of the deceased. It is alleged that on 16th December, 2017 while the husband of the complainant was returning he was assaulted by the accused. It is stated that Sajid, Chottu Bhangarwala, Sharukh Rafiq Bangali, Jivadada (full name not known) caught hold of the husband of the complainant. Sajid had fired at the deceased and

Chottu assaulted him by knife. The injured succumbed to injuries after registration of First Information Report. Investigation had proceeded. Statement of witnesses were recorded. Apart from the complainant, another witness namely Nafisa Rajak Sheikh had also referred to the name of Jivadada as one of the person who had participated in the crime. Statement of eye witnesses Rehana Rajak Shaikh was recorded on 19th December, 2017. She has stated that several persons including the person wearing military coloured shirt caught hold of the victim and other have assaulted him by knife and gun-shot. On completing investigation, chargesheet is filed.

3. Learned counsel for the applicant submits that the identity of the applicant as a person involved in the crime has not been established. There is no evidence on record to indicate that applicant is Jivadada. Other persons who has given description of the person involved in the crime. Investigation Officer has conducted the identification parade and one of the witness Rehna Shaikh has not identified the applicant as same person.

4. Learned APP submitted that applicant is a person who has been referred to as Jivadada by the complainant and other

witnesses have given the description of the accused who had participated in the crime which indicate that one of them was wearing military colour shirt. There were blood stains noticed like blakish on the cloth recovered at the instance of the applicant. It is further submitted that there are three criminal antecedents against the applicant.

5. I have perused the role attributed to Jivadada who is supposed to be applicant. He caught hold of the deceased and co-accused had fired at him and another accused had assaulted by knife. Although two witnesses have referred to one person as Jivadada, which according to the prosecution is the applicant, there is no evidence on record to show that the applicant is Jivadada. There is recovery of T-shirt at the instance of the applicant. It is not clear that the same T-shirt was having blood stain. It is pertinent to note that independent witness Rehana Shaikh who has given description has not identified the applicant, although she was put in identification parade. The other witnesses had given description of the assailants were not put for identification parade qua the applicant. He is in custody from 27th December, 2017. Chargesheet is already filed. In the

circumstances, bail can be granted to the applicant with certain conditions. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with CR No. I-165 of 2017 registered with Tilak Nagar Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall remain out of the jurisdiction of Dombivali.
- iv. Applicant shall furnish the details about his place of residence to the Investigating Officer after he is released on bail;
- v. Applicant shall attend the trial Court regularly on the date of hearing of the case, unless exempted by the trial Court;
- vi. Criminal Application stands disposed off.

(PRAKASH D. NAIK, J.)