

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

CRIMINAL BAIL APPLICATION NO. 2394 OF 2019

Dhanesh @ Dam Murlidhar Temkar Applicant

Versus

The State of Maharashtra Respondent

Mr. Aashish Satpute I/b. Vivek Arote, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. V. M. Dandge, PSI, Chakan Police station, present.

CORAM :SARANG V. KOTWAL, J.
DATE :26th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 690 of 2015 registered with Chakan Police Station, Pune, under sections 302 and 120B of the Indian Penal Code and under section 4 r/w. 25 of the Indian Arms Act. The offence is registered on 18/12/2015 in respect of commission of murder of one Harshal Borhade. The applicant was arrested on 09/01/2016 and since then he is in custody. The investigation is over and the chargesheet is filed.

2. The FIR is lodged on 18/12/2015 by an eye witness Amol Londhe who was friend of the deceased. He has stated in his FIR that he and the deceased were working at the same place. The deceased was working as a driver with one Chhaya Walke. About two months prior to the incident of murder, the deceased and one Sandeep Mhalungkar had quarrelled with each other. At that time, Sandeep had threatened the deceased. On 18/12/2015 at about 5.30p.m. the informant and the deceased were going on Harshal's motorcycle towards Mhalunge village to meet Harshal's mother. They met her near a temple. She told him to reach Mhalunge Phata directly. They started going there. When they reached near a water tank, a white Wagon R car intercepted them. The deceased fell down. The car was driven by one Abhid Shaikh. The applicant was sitting on the front passenger's seat. He got down with a sword. Abhid Shaikh got down with a sickle. Two others who were sitting behind also got down. The applicant confronted the deceased as to why he was showing attitude against Sandeep. By saying this, all of them started assaulting the deceased with their respective weapons. The informant got scared and ran towards

Sunny Walke's house and told him about the incident. Sunny and others along with the informant went to the spot. By that time, Harshal was severely injured. His mother was also there. Harshal had suffered injuries over his head, neck, face and hands. He was taken to Sanjivani Hospital, then to Unicare Hospital, Chakan. There he was declared dead. On this basis, the FIR was lodged.

3. The postmortem notes show that the deceased had suffered about 19 to 20 incised wounds all over his body. There was skull fracture at different places. The cause of death was mentioned as, "Death due to A/C cardiac arrest due to traumatic and hemorrhagic shock due to grievous injuries to major vital organs." The investigation was carried out and the applicant was arrested on 09/01/2016 as mentioned earlier.

4. Heard Mr. Aashish Satpute, learned counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that the applicant is falsely implicated due to previous enmity. There is no recovery of any weapon at his instance. He submitted that there are two eye witnesses Chand Shaikh and Govind Ghate who had

seen the incident, but they have not identified the applicant during their test identification parade. He submitted that, presence of mother of the deceased on the scene of the offence is doubtful. He, therefore, submitted that, considering all these aspects, the applicant should be released on bail.

6. Learned APP relied on the statement of the first informant, Nanda Borhade mother of the deceased, as well as, statements of the eye witnesses. She relied on the statements of witnesses Abhijit Amrale and Yuvraj Soni who had seen and heard the accused including the applicant hatching conspiracy to commit murder of the deceased because accused were convinced that deceased was about to give evidence against them in another murder case.

7. I have considered all these submissions. The informant and the mother of the deceased have seen the actual incident. The informant has given specific role to the applicant. The FIR is immediately lodged. Nanda, the mother of the deceased has not named the applicant, but she has seen the incident and she has stated that along with two known persons, there were two others.

She has identified the applicant in the test identification parade. Though, other two eye witnesses have not identified the applicant, they had seen the actual assailants running away from the spot. They have not described the actual incident of the assault in the statement. Besides this, statements of Abhijit Amrale and Yuvraj Soni show that just 2 to 3 days prior to the incident all the accused including the applicant had hatched the conspiracy to commit murder of the deceased. Hence, at this stage, there is strong material against the present applicant showing his complicity in the offence. No case for grant of bail is made out.

8. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)