

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2249 OF 2018**

Nilesh Balasaheb Ransing] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. A. P. Mundargi i/b. Sidheshwar N. Biradar, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 10th OCTOBER, 2019.

P. C. :-

The applicant is seeking his release on bail in connection with C.R. No.1036/2017 registered at Lonikand Police Station, Pune on 4/11/2017 under Sections 302, 307 r/w. 34 of IPC.

2. The prosecution case pertains to murder of one Dinesh Vaijnath Dhepe and causing serious injury to one Vishwajit Kudale. The applicant was arrested on 8/11/2017 and since then, he is in custody. The investigation is over and the chargesheet is already filed.

3. The incident had occurred in the night between 3/11/2017 to 4/11/2017. The FIR is lodged by one Kaluram Shankar Khade who had found the dead body of the deceased near Lakdevasti, Sangvi. The deceased had suffered 38 injuries in the nature of lacerated wounds, abrasions, contusion etc. The injured Vishwajit had suffered eight injuries including fracture of the left hand.

4. Heard Mr. Mundargi, Ld. Senior Counsel for the Applicant and Mr. Jadhav, Ld. APP for the State/Respondent.

5. Shri. Mundargi submitted that the case mainly based on the statement of sole injured eye witness Vishwajit Kudale. The statement itself is unreliable and vague. His statement at first instance was recorded by police and it is not included in the chargesheet. The earlier statement is suppressed by the police and does not form part of chargesheet. He submitted that the police have annexed the C.A. certificate. The C.A. report does not show the blood was that of the deceased on his clothes. He submitted that the motive alleged against him is weak. The recovery of the

alleged murder weapons i.e. wheel spanner and screw driver is not incriminating as they are not even sent for chemical analysis. He submitted that the other two accused are already granted bail. According to him, considering the weak nature of evidence against the applicant, he deserves to be released on bail.

6. Shri. Jadhav opposed this application by relying on the statement of injured eye witness. He submitted that at this stage there is no reason to doubt the truthfulness of the statement.

7. I have considered these submission. As far as motive is concerned, the chargesheet contains statement of one Ratnamala Kunjir. The applicant was earlier working with her as a driver. The applicant himself was instrumental in the deceased getting a job as a driver with this witness. However, subsequently there used to be quarrels between the applicant and the deceased. The applicant was removed from the job and since then there was enmity between them. The statement further shows that accused No.3 Ravindra

Shinde was to be paid his dues. On 3/11/2017, she had given Rs.2 Lakhs in an envelope to the deceased. The deceased was asked to make the payment to the accused No.3. The deceased thereafter was not seen by this witness and she was informed that he was murdered.

8. The statement of the eye witness Vishwajit Kudale mentions that he was a friend of the deceased. On 3/11/2017, around 6.00 p.m. the deceased called him and told him that they had to go to Rahu. The deceased told him that he had to make payment to someone at Rahu. Therefore, this witness and the deceased went together on a two wheeler of the deceased. At 8.30 p.m. they reached Hotel Vaishnavi. The deceased, Ravindra Shinde i.e. accused No.3 and this witness consumed liquor. The deceased paid the money which he was carrying, to accused No.3. After they finished drinking liquor, accused No.3 Ravindra Shinde made some phone call. The deceased and this witness started going towards Sangvi. This witness Vishwajit felt sleepy and dozed off. He covered his face with a cap. After

some time, he realised that the deceased had parked his two wheeler on which they were travelling. He heard some exchange of words at some distance. According to him, he was unable to hear clearly. But he realised that some quarrel was going on between the deceased and another person who was assaulting him. According to this witness, the deceased was calling that unknown person by the name "Nilesh". There was one more unknown person helping Nilesh. This witness went to the spot where the quarrel was going on. That person also assaulted this witness. He suffered injuries and became unconscious. Thereafter, he did not remember what had happened clearly but somehow he got admitted in local hospital. His statement interestingly further mentions that at that time police came there and recorded his statement. Thereafter, he was discharged on 5/11/2017 and his statement which was included in the chargesheet was recorded on 12/11/2017. As there was no reference to his earlier statement, on the last occasion, I had directed the Investigating Officer to file an affidavit explaining why that statement was not a part of the

chargesheet. Pursuant to that direction, the Investigating Officer PI Shri. Sarjerao Patil filed affidavit on 26/9/2019. In that affidavit following averments are made.

“ I say that during the course of investigation, the statement of injured person namely Vishwajit Shivaji Kudale came to be recorded on 4/11/2017 at Nobal Hospital, it is noticed that the said injured Vishwajeet Shivaji Kudale was heavily drunken condition, hence the recorded statement of said Vishwajeet was not faithful. So, we have not annexed the said statement in chargesheet. However, he has been discharged from hospital and thereafter, on 12/11/2017, the statement of Vishwajeet Shivaji Kudale came to be recorded and the said statement has been annexed with the copy of chargesheet.”

9. This stand of the Investigating Agency itself shows on 4/11/2017 according to the Investigating Office, this witness Vishwajit was in heavily drunken condition and therefore, police did not believe his statement. Taking this line of reasoning further, it also means that he could not be in his senses to witness the incident and hear the conversation between the assailant and the deceased. The prosecution case is specific that after drinking liquor this incident had occurred and thereafter till he was admitted in local hospital there was no occasion for him to consume liquor. The Investigating Agency did not take trouble of conducting a test identification parade to enable this witness to identify any of the accused. The prosecution case is mainly based on the statement of this witness. Considering these aspects, even at this stage, it appears that this witness, though an injured witness, his statement cannot be termed as reliable piece of evidence. In any case, the statement is very vague. There is no clear material to show that the applicant was seen in the vicinity.

10. The motive brought forth by the prosecution through the statement of Ratnamala is also not very strong.

11. The other circumstance of finding of blood stains on the applicant's clothes cannot be held against him for two reasons. Firstly, the C.A. report does not conclusively show the blood was of the blood group of the deceased and secondly, those clothes were produced by wife of the applicant. They were not recovered pursuant to any statement given by the applicant.

12. Another circumstance of recovery of wheel spanner and screw driver from his car can hardly be called incriminating circumstance. These are normal articles found in a vehicle. Those articles are not even sent for chemical analysis. Thus, there is nothing to connect those articles with the alleged crime. Apart from this, there is one statement of Dr. Nilesh Borde. The applicant had approached him on 3/11/2017 at about 11.45 p.m. The Doctor removed X-ray of his hand and it was noticed that the applicant had suffered fracture to his hand. However, this

circumstance does not connect the applicant with the alleged assault because the prosecution case is silent about the assailant having suffering any injury.

13. Considering all these weak pieces of evidence, at this stage, the applicant has sufficiently made out a case for his release on bail during the pendency of trial. Hence, the following order.

ORDER

(i) The Applicant is directed to be released on bail in connection with C. R. No.1036/2017 registered at Lonikand Police Station, Pune, on his furnishing 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)