

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

CRIMINAL BAIL APPLICATION NO. 2616 OF 2019

Dhiraj Sadashiv Shinde	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Pankaj D. Purway, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :15th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 463 of 2019 registered with Wakad police Police Station, Pune, under section 302 of the Indian Penal Code. The applicant is arrested on 29/03/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The case of the prosecution is that, because of some quarrel between the deceased Zuber and a Juvenile in conflict with law this incident had taken place. The allegations against the

applicant are that, he helped the other accused in assaulting the deceased with sword and a heavy sharp weapon.

3. The FIR is lodged on 29/03/2019 by Gulab Mujawar, who is father of deceased Zuber. He has stated that on 28/03/2019 at about 7.00p.m. the juvenile in conflict with law came to their house. They went out. There was some quarrel between them, but the informant and his wife told him not to fight. The juvenile in conflict with law assured that there was no issue between them and they were friends. Both of them left together and since then Zuber did not return home. On the next day morning the informant had gone in search of work. While coming back, at 11.00a.m, he saw a dead body lying in an open place in Sonawanevasti. He went near and found that the dead body was of his son. He was brutally assaulted and, therefore, FIR was lodged. The investigation was carried out and the applicant was arrested as mentioned earlier. The chargesheet is already filed.

4. Heard Shri. Pankaj Purway, learned counsel for the

applicant and Smt. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that this case is based on circumstantial evidence and there are no circumstances whatsoever against the present applicant. The only piece of evidence the prosecution is alleging against him is recovery of sword, but even that circumstance does not connect him with alleged crime. Learned APP submitted that the Chemical Analyzer's report is still awaited. Apart from that, there is no material against him.

6. I have considered these submissions. The deceased had suffered as many as 42 injuries and the death was because of all these multiple injuries. There is no doubt that the deceased was brutally assaulted, however, the prosecution will have to show some evidence to show connection of the applicant with the alleged crime. The informant's statement makes a reference to the other accused and not to the present applicant. Nobody has seen the applicant being with the deceased prior to the incident. The

only evidence as submitted by the learned counsel for the applicant is alleged recovery of sword at his instance.

7. The police have recorded applicant's statement U/s.27 of the Indian Evidence Act, however, significantly, that statement does not mention the place where the sword was concealed by the applicant. Thus, it is doubtful at this stage, as to whether that particular statement had led to recovery of the sword. The sword was recovered from below stones in Sonawanevasti, Pune. That is the only piece of evidence against the applicant. Till today, C.A. report is not available. The recovery was effected on 01/04/2019 and after more than six months now the C.A. report is not available. In any case, as mentioned earlier, it is difficult to hold that the recovery is an incriminating piece of evidence as the memorandum statement of the applicant is not strictly in compliance with the requirement of S.27 of the Indian Evidence Act. However, this fact will have to be decided by the trial court during conduct of the trial when the evidence is led. At this stage, there is hardly any material against the applicant. No motive is

attributed against the applicant. In this view of the matter, applicant has made out a case for his release on bail.

8. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 463 of 2019 registered with Wakad Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR 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.)