

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

CRIMINAL BAIL APPLICATION NO. 2546 OF 2018

Omkar Sanjay Sawant ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 3285 OF 2018

Anil Harihar Rajbhar ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 3113 OF 2018

Pratik Diwakar Kamble ... Applicant
Vs.
The State of Maharashtra ... Respondent

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Mr. Anil G. Lalla a/w Ms. Beerta Bafna & Ms. Anchal Lalla I/by
Bhanudas Jagtap for the applicant in B.A. No. 2546 of 2018

Mr. Sanjeev P. Kadam I/by Mr. Bhanudas Jagtap for the applicant
in B.A. No. 3285 of 2018.

Mr. Umesh Mankapure a/w Ms. Akanksha Helaskar I/by Sarthak
Diwan for the applicant in B.A. No. 3113 of 2018.

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th JANUARY, 2019.

P.C.

1. These are the applications for bail in connection with CR No. 458 of 2017 registered with MHB Colony Police Station for the offences punishable under Sections 302, 201, 109 read with 34 of Indian Penal Code. The applicants were arrested on 23rd

November, 2017.

2. The case of the prosecution is that victim was suspected to be thief and hence victim was assaulted by the accused. After the assault, the accused tried to destroy the evidence by removing the injured from the place of incident and dumping the body at another place. On completing investigation, chargesheet has been filed.

3. As far as the applicant in Bail Application No. 3285 is concerned the role allegedly attributed to him by the prosecution is that he had driven the tempo in which the injured was taken away from the place of incident after the assault. There is no eye witness attributing overt act to the said applicant. However, the said vehicle was recovered at the instance of applicant and inference was drawn that the said applicant who had driven the vehicle in which the injured was taken away. There is no eye witness identifying the applicant as a person driving said vehicle or participating the crime in any manner. Taking the prosecution case as it is the charge attributed to this applicant is under Section 201 of Indian Penal Code. As far as applicant in Bail Application No. 3113 of 2018 and Bail Application No. 2546 of 2018 it is alleged that he had participated in the assault. Learned

advocate representing the respective applicants submitted that there are contradiction in the statement of the witnesses. Allegations are general in nature. No specific overt act has been attributed to the said applicants. One of witness Ramesh Katara in his statement under Section 164 of Code of Criminal Procedure has stated that victim was assaulted by fist and kick blows and there is no reference that he has been assaulted by wooden stick. There was no intention to commit the murder. Learned APP however submitted that said applicants were attributed overt act of participation in the crime. There are eye witnesses to the incident. There is recovery of wooden stick at the instance of the said applicants. The victim had sustained several injuries which has resulted in his death and hence offence under Section 302 of Indian Penal Code is made out. As counter to the submission, learned counsel representing the applicants submitted that there was no blood stain on the wooden stick recovered at the instance of the applicant and the said recovery was effected in the open place.

4. I have perused the chargesheet. Indeed there are contradictions in the statement of the witnesses. However, sum and substance it is alleged that applicant in B.A. No. 2546 of 2018

and B.A. No. 3113 of 2018 had assaulted the victim. The overt act of assault is attributed to all the assailants which are general in nature. The case of the prosecution is that the victim was assaulted under belief that he has committed theft. Although, the assailants had no licence to kill the person under the grab that he has committed theft. It will have to be considered that the role of assault had been attributed to several persons which is general in nature and injury sustained by victim were abrasions and contusions and it does not appear that there was any intention to commit the murder. Applicants are in custody since 23rd November, 2017. There are no criminal antecedents against them. Considering the aforesaid circumstances, case for grant of bail is made out.

ORDER

- i Criminal Bail Application No. 2546 of 2018, Criminal Bail Application No. 3285 of 2018 and Criminal Bail Application No. 3113 of 2018 are allowed;
- ii. Applicants are directed to be released on bail in connection with C.R. No. 458 of 2017 registered with MHB Colony Police Station on their furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or more sureties in their like amount;
- iii. Applicants are permitted to furnish cash security in the sum of Rs.25,000/- each for a period of six weeks;

- iv. Applicants shall report to the concerned Police Station once in a month on first Saturday of the month between 11 a.m. to 1 p.m. till further order;
- v. Applicants shall not tamper with the prosecution witnesses;
- vi. Applicants shall attend the trial Court on the date of hearing unless exempted by the trial Court;
- vii. Criminal Bail Applications stand disposed off.

(PRAKASH D. NAIK, J.)