

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

BAIL APPLICATION NO. 2891 OF 2018

Aditya Bhagwan Kalamkar	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Aniket Nikam i/b Mr. Vivek Arote for the Applicant.
 Ms. S.S. Kaushik, A.P.P. for the Respondent – State.
 Mr. S.S. Kunvale, Police Constable, Rajgad Police Station, Pune, present.

CORAM : P.N. DESHMUKH, J.

DATED : 10th APRIL, 2019.

P.C. :

1 One of the accused involved in Crime No.69 of 2017 registered with Rajgad Police Station, Pune, for the offences punishable under Sections 302, 143, 147, 148, 149, 109, 120(b) of I.P.C. has filed application for bail. Admittedly charge-sheet is filed.

2 Learned Counsel for applicant submitted that applicant is not named in the F.I.R. nor his involvement in this crime is established from the statement of eye witness Sunil, nor there is any evidence even to doubt involvement of applicant in the present crime. It is, therefore, prayed that application be allowed.

3 Learned A.P.P. opposed the application contending that in the present crime one motorcycle owned by applicant is seized and on the count that in some photographs applicant is seen with other co-accused and that apart from present crime, one offence is registered against applicant for the offence punishable under Section 326 of I.P.C. Learned A.P.P., on instructions, however, could not point out any evidence establishing involvement of applicant in the present crime.

4 Perusal of report lodged by brother of deceased would reveal involvement of co-accused Pravin @ Bablu More to have assaulted Mahesh Patne, cousin of deceased and, therefore, deceased had assaulted Pravin when Pravin had threatened deceased, which incident is said to be stated by deceased to complainant. As such first part of F.I.R. do not implicate applicant in any manner.

5 Perusal of further report, same is with regard to incident which took place in the night between 29.04.2017 and 30.04.2017 when deceased along with his friend Sunil Lokawale were sleeping on the terrace of a petrol pump, when deceased was assaulted. According to complainant, on receiving information of incident from watchman Shridhar Pawar, he immediately reached on the spot and on enquiry from the deceased is informed that co-accused Bablu i.e. Pravin More, and his four

associates assaulted him by koyta and sword. Complainant shifted deceased to hospital with the assistance of Sunil Lokawale however, he was declared dead on admission to hospital. As such, from the report no involvement of applicant is established in any manner.

6 Statement of Sunil, the sole eye witness also do not establish applicant's involvement as according to his version when he along with deceased were sleeping on the terrace, after 2.30 a.m. he saw four persons assaulting deceased by koyta and sword, out of whom one threatened Sunil to not to intervene in the assault and continued blow by koyta and sword on deceased on his head, back, both limbs. Said eye witness has named co-accused Pravin More alone. As such, even from the statement of eye witness, no involvement is found.

7 Though according to the postmortem reports, deceased had sustained 34 injuries in the nature of chop wound, stab wounds and his cause of death is certified to be due to hemorrhage and multiple injuries in the absence of any evidence against applicant. Application is liable to be allowed as per order below:

ORDER

(i) Applicant shall be released on bail in Crime No.69 of 2017 registered with Rajgad Police Station, Pune, for the offences punishable under Sections 302, 143, 147, 148, 149, 109, 120(b) of I.P.C. on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

(ii) While on bail, applicant shall mark his presence with Rajgad Police Station, Pune, once in three months on the first day of such month pending trial.

(iii) Learned trial Court Judge, shall not get influenced in the observations as aforesaid and shall independently evaluate the evidence on record at the time of trial.

Application is allowed.

(P.N. DESHMUKH, J.)