

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3233 OF 2018

Viran @ Guddu Malang Muttu] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Aniket Nikam i/b Mr. Vivek Arote, Advocate for the Applicant.

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

PSI M.M. Pawar attached to Dehuroad Police Station, Pimpri Chinchwad present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 15th JULY, 2019.

P. C. :-

1. The applicant is seeking bail in connection with C.R.No.02/2018 registered with Dehuroad Police Station, Pune u/sec. 302, 341 r/w 34 of I.P.C. Initially, the offence was registered u/sec. 307 of I.P.C. However, subsequently the deceased Monu died of his injuries and therefore, Section 302 of I.P.C. was added.

2. The FIR in this case is lodged by Vijay Tak i.e. father of the deceased Monu on 01/01/2018. He has stated in his FIR that on 31/12/2017, he received a phone call from his elder son Sunil that his

other son Monu was being assaulted and was admitted to Aadhar Hospital. The first informant went to Aadhar Hospital. He saw that Monu had suffered injuries on his head, chest and stomach. Since, their financial condition was weak, Monu was shifted to Y.C.M. Hospital. There he was treated in the I.C.U. He has mentioned in his FIR that, at that time, the police from Dehuroad Police Station came to lodge his FIR. But by that time, the first informant was not knowing the details of the incident. Therefore, he could not give his FIR. It is further mentioned in the FIR that on 01/01/2018, at 5.30 a.m., Monu regained consciousness. The first informant asked him regarding details of the incident. At that time, Monu told him that, while he was coming back to his house, near Saudagar Garden, the present applicant, one Sandya Vitkar and Amit stopped him. The applicant assaulted him with iron rod on his head. The others assaulted him with stones on his chest and stomach. He became unconscious and somebody took him to hospital. Therefore, the first informant lodged the FIR because of serious injuries suffered to Monu. The offence was registered u/sec. 307 of I.P.C.

3. After lodging of the offence, the investigation started. Police recorded statement of one Prem Vitkar who had admitted Monu to Aadhar Hospital. His first statement shows that Monu did not inform him about the incident. Thereafter, Monu succumbed to his injuries on 02/01/2018 at about 8.00 a.m. Prem Vitkar's statement was recorded again on 02/01/2018 and at that time, this witness stated that Monu told him that the present applicant and others had assaulted him. This story was similar to the story given by the first informant.

4. The other family members viz., brother Sunil, other relatives Chetan, Chetan's wife Meena, Monu's mother Shobha, Monu's sister-in-law Priya and Monu's wife Pallavi have stated that Monu had regained consciousness at 5.30 a.m. on 01/01/2018 and had narrated the incident. Their statements corroborated the statement of the first informant.

5. The investigation papers also include panchanama under which the clothes of the applicant were seized. An iron rod was recovered at his instance.

6. Heard Mr. Aniket Nikam, Ld. Counsel for the Applicant and Mr.Prashant Jadhav, Ld. APP for the State/Respondent.

7. Mr. Nikam submitted that the witness Prem Vitkar is not a reliable witness because he has given two different versions in his two statements. In the first statement, when the deceased was alive, he has not stated that the deceased had told him about the incident. He therefore submitted that, this witness had improved his version on the next day and had falsely stated that the deceased had made dying declaration to him.

8. The main contention raised by Mr. Nikam is that the deceased could not be in a position to give any statement considering the nature of injuries suffered by him. In support of his submissions, he relied on the postmortem notes which show that the deceased had suffered 15 injuries and the cause of death was “Blunt trauma to abdomen”. He further invited my attention to the certificate given by Aadhar Hospital on 31/12/2017, wherein it is mentioned that the patient was not in a position to give any statement. Whereas the certificate of Y.C.M. Hospital, Pimpari also mentioned that Monu was admitted to I.C.U and that he was not in a position to give statement.

9. Significantly, all these certificates do not mention the time at which these certificates were issued. Therefore it is not possible to infer at what point of time, patient Monu was not in a position to give his statement.

10. Mr. Nikam further invited my attention to the supplementary charge-sheet filed by the investigating agency. He had raised doubts about the oral dying declaration. He submitted that the medical papers of the treatment given to Monu were subsequently collected by the Investigating Officer and these statements indicate that the deceased may not be in a position to give any statement. He further submitted that at some points, in these papers the time is mentioned, but at 5.30 a.m. on 01/01/2018, there is no endorsement that the patient was in a position to give any statement. He further submitted that it was not possible that all the relatives of Monu would be present in the I.C.U. when he had made this oral dying declaration.

11. Ld. APP has opposed these submissions. According to him, the dying declaration given to Monu's father was an important circumstance which clearly makes out a case against the present applicant.

12. I have considered both these submissions. At this stage, there is some force in the submission of Mr. Nikam that the statement of witness Prem Vitkar is not reliable. He has definitely changed his version. The supplementary statement was recorded on the next day i.e. on 02/01/2018 after deceased Monu was succumbed to his injuries. However, the oral dying declaration given to father of the deceased cannot be doubted. At this stage, the postmortem notes shows that the deceased did not suffer any serious injury to his head. The cause of death was mentioned as "Blunt trauma to abdomen". Therefore, at this stage, it is not possible to infer that the deceased was not in a position to make a statement at 5.30 a.m. on 01/01/2018. The medical record produced by the investigating agency through supplementary charge-sheet does indicate that on 31/12/2017 when patient Monu was admitted to Y.CM. Hospital at 10.00 p.m., he was fully conscious. He was well oriented. C.T. Brain was normal. Therefore, there is nothing to make it impossible for Monu to have narrated the incident at 5.30 a.m. on 01/01/2018. The medical papers had not indicated that from the time of his admission till 5.30 a.m., he had lost consciousness and was not in a position to give any statement. The criticism of Ld. Counsel for the applicant that

these medical papers were produced on record belatedly has no substance because these medical papers pertain to a Government hospital and it is not possible to hold at this stage that, these medical papers were tampered with at the hospital. Therefore, at this stage there is an important circumstance of oral dying declaration against the present applicant. Therefore, no case for his release on bail is made out. Hence, the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)