

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

CRIMINAL BAIL APPLICATION NO.3429 OF 2018

Baban Dattatraya Sable

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Aniket Nikam i/b. Vivek N. Arote, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- Sarjerao Bajirao Patil, Lonikand Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 28th JUNE, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1036/17 registered with Lonikand Police Station, Pune, under sections 302, 307 r/w 34 of the Indian Penal Code.
2. The incident had occurred in the night between 03/11/2017 to 04/11/2017. The present Applicant was arrested on 08/11/2017 and since then he is in custody. Name of the deceased is Dinesh Vaijnath Dhepe.

3. The FIR is lodged by one Kaluram Shankar Khade, who had found the dead body of the deceased near Lakdevasti, Sangvi. The post-mortem notes though were not part of the charge-sheet, they are produced before me. They show that the deceased had died because of hemorrhage and shock due to multiple injuries. There were 38 injuries on the dead body in the nature of lacerated wounds, abrasions, contusion etc. There was another injured witness in this case namely Vishwajit Shivaji Kudale, who was with the deceased. He had suffered 8 injuries. He had suffered fracture of his left hand.

4. The investigation in this case is over and the charge-sheet is filed. Main important piece in the entire charge-sheet is statement of injured eyewitness Vishwajit Kudale. He has stated that in the night of 03/11/2017 he along with deceased had gone to Hotel Vaishnavi. They had met one Ravindra Shinde (Accused No.3). They had consumed liquor. Thereafter they were proceeding towards Sangvi bifurcation road. This witness Vishwajit felt sleepy and had dozed off. Suddenly he realized

that the deceased had parked the scooter on which they were travelling. He was having some exchange of words with one person. Vishwajit did not know that person, but the deceased was referring to him as Nilesh. There was one more unknown person present with the said Nilesh and he was helping Nilesh. When this witness Vishwajit went near his friend Dinesh to intervene, Vishwajit was assaulted by a wheel spanner and a sharp weapon. Vishwajit fell unconscious on that spot. When he regained consciousness he tried to take shelter in the nearby locality, but nobody helped him. He somehow contacted his relative and thereafter he was shifted to hospital for treatment.

5. Heard learned Counsel Mr.Aniket Nikam for the Applicant and learned APP Mr.S.S. Kaushik for the State.
6. Though, the prosecution case is that the offence was committed by Nilesh and the present Applicant, there is only one eyewitness i.e. Vishwajit Kudale. Vishwajit himself was not knowing Nilesh. The present Applicant's name does not find

place in his statement. No test identification parade was held to enable him to fix the identity of the assailants. There is no recovery of any article or weapon at his instance. There is a Panchanama under which the clothes of the co-accused Nilesh and the present Applicant were recovered. That Panchanama shows that the clothes were produced by Nilesh's wife Puja. However, her statement is not recorded and even that Panchanama cannot be connected with the present Applicant. Therefore in the entire charge-sheet there is absolutely no incriminating material against the present Applicant.

7. Learned APP pointed out that the telephone record shows that the Applicant was in the vicinity when the incident took place. However, that is a weak piece of evidence. It does not connect the present Applicant with the actual assault. The statement of the injured eyewitness is that the Dhaba was nearby and there were other people at the Dhaba. Therefore that piece of evidence is not sufficiently incriminating against the present Applicant.

8. In this view of the matter, the Applicant has made out the case for his release on bail. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.1036/17 registered with Lonikand Police Station, Pune, 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.)