

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.312/2020

Vikas Bhanudas Dombale.] ... Applicant

Versus

The State of Maharashtra.] ... Respondent

Ms. Tanvi G. Tapkire for Applicant.
Mr. Y. M. Nakhawa, APP for State.

CORAM :- C. V. BHADANG, J.
DATE :- 21 SEPTEMBER, 2020
(THROUGH VIDEO CONFERENCING)

P. C. :-

1. The Applicant (accused no.4), along with co-accused, is facing prosecution for the offences punishable under sections 302, 307, 364 and 341 read with 34 of IPC, for having intentionally caused the death of Akhilesh @ Saifali Magdum.

2. The prosecution case as disclosed from the complaint of Sajid Magdum who is the brother of the deceased and other prosecution witnesses is that on 12/12/2018, the Applicant along with co-accused, armed with wooden rod, a knife, etc. had gone to the 'Nashta centre' run by the complainant Sajid at about 8.00 p.m. enquiring about the whereabouts of the deceased. The complainant informed them that he was not aware as to where the deceased was. After that at about 9.00

p.m., a friend of the complainant informed that the vehicle as well as mobile of the deceased was lying at Mayakka Nagar, Bamnoli and that the deceased was carried by 4 persons on their 2 wheelers. The complainant along with his friends went to Mayakka Nagar and informed about the incident to the police who were on patrolling duty. It is the material prosecution case that thereafter the complainant and his friends, with the help of the police, made a search and ultimately the deceased was found lying on a 'kachha road' at Ajinkya Nagar, ITI Colony, Kupwad, in an injured condition. The deceased was found to have sustained injuries on the hand, back, chest and other parts of the body. He was taken to the hospital where he succumbed to the injuries on 14/12/2018. Prior to that, on the basis of a complaint lodged by Sajid on 13/12/2018, an offence came to be registered against the accused nos.1 to 3 and one unknown person. It may be mentioned that the Applicant was arrested on 15/12/2018 and after completion of investigation, a charge-sheet is filed.

3. The learned Sessions Judge has refused to release the Applicant on bail by an order dated 23/08/2019 on the ground that there is an eye witness account of the incident and there is possibility of tampering of the prosecution evidence and abscondence, if the Applicant is released on bail.

4. I have heard Ms. Tapkire, learned Counsel for the Applicant and Mr. Nakhawa, learned APP for State. Perused record.

5. The learned Counsel for the Applicant has submitted that the Applicant is not named in the FIR lodged by Sajid. It is submitted that the evidence of identification parade, is *prima-facie* not acceptable in, as, much as, the same is not conducted as prescribed in the Criminal Manual. It is submitted that there are two identifying witnesses Aarti Khillare and Sajid Magdum out of which Aarti Khillare has not identified the present Applicant to be the assailant. It is submitted that the statement of Suraj Mulwad is recorded on 28/12/2018 i.e. more than two weeks from the date of the incident and he is a chance witness. It is submitted that thus there is no *prima-facie* case showing the involvement of the Applicant in the alleged assault and the Applicant be released on bail.

6. The learned APP has opposed the application. It is submitted that the complainant has identified the Applicant in the identification parade and in any event, there is a statement of Suraj Mulwad who has named the Applicant as one of the assailants. The offence is serious and if released, there is a possibility of the Applicant absconding or tampering with the prosecution evidence as there is previous enmity between the parties.

7. I have carefully considered the circumstances and the submissions made. The offence is one which is punishable with death or imprisonment for life. Although the complainant has not named the Applicant in the FIR, he has stated that the accused nos.1 to 3 along with one unidentified person had come to his 'Nashta centre' enquiring about the whereabouts of the deceased. In an identification parade conducted on 31/01/2019, one of the identifying witnesses i.e. the complainant has identified the Applicant. *Prima-facie*, at this stage, there is also statement of Suraj Mulwad showing the involvement of the Applicant. This is not a stage where the material can be examined or appreciated in details. There are multiple injuries shown to be sustained by the deceased as mentioned in column no.17 of the post-mortem report which are consistent with the nature of the assault. The cause of death is shown to be due to such multiple injuries sustained.

8. Considering the overall circumstances, I do not find that this is a case where the Applicant can be released on bail. In the result, the Criminal Bail Application is dismissed. The trial is expedited.

(C. V. BHADANG, J.)