

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

CRIMINAL BAIL APPLICATION NO. 1135 OF 2020

Sanjay Machindra @ Undya Kale	.. Applicant
V/s.	
The State of Maharashtra	..Respondent

Ms. Tanvi Tapkire, for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

**CORAM : C.V. BHADANG, J.
DATE : 7th DECEMBER, 2020**

P.C.

. The applicant (accused No.4) alongwith co-accused is facing prosecution in Crime No.331/2018 registered with Police Station Miraj Rural, District Sangli, for the offence punishable under Section 302, 323, 504 and 506 r/w. 34 of the IPC for having intentionally caused the death of Suraj Chiknya Pawar, aged about three years.

2. The prosecution case, as disclosed from the complaint dated 6/10/2018 lodged by Chiknya Tragger Pawar, who is the father of the deceased, is that on 5/10/2018, at about 6.15 p.m. the brother-in-law of the complainant, namely Fire Gairajya Kale made a call to the complainant asking him to bring Rs.10,000/- so that the wife and son of the complainant can be sent with him. The complainant

alongwith deceased Suraj went to Gundewadi and reached there at about 8.00 p.m. It is alleged that the father-in-law of the applicant namely Gairajya Kale alongwith his brother Sanjya Kale (the applicant), brother-in-law Fire, Bahirya alongwith others were present. It is said that the Gairajya and Fire asked the applicant whether he has brought the amount. The applicant gave Rs.10,000/- to Gairajya Kale after which Fire is alleged to have kicked the applicant. It is said that Gairajya asked others who were present not to leave the applicant alive as the applicant was not properly cohabiting with his wife (the daughter of Gairajya). It is said that Gairajya alongwith present applicant and one Bahirya started assaulting the complainant with kicks and fist blows and when the deceased Suraj came between them, the applicant kept his leg on the face of the deceased, as a result of which, Suraj died.

3. On the basis of said complaint, the offence came to be registered and after investigation, the chargesheet is filed.

4. The learned Sessions Judge has refused to release the applicant on bail by order dated 29/7/2019 in Criminal Bail Application No.818/2019.

5. I have heard the learned counsel for the applicant and the learned APP for the respondent / State. Perused record.

6. Ms. Tapkire, the learned counsel for the applicant submitted that the prosecution case is improbable and unbelievable. She has referred to the Post Mortem report of Suraj in order to submit that the same does not support the case of the prosecution. She has then referred to the Call Data Record (CDR) of the applicant in order to submit that at about 8.00 p.m. on 5/10/2018, the location of the applicant is shown at Malegaon, Tehsil Miraj which is at a distance of more than 50 K.M. from Gundewadi where the incident is alleged to have happened. It is submitted that the wife of the complainant (the mother of the deceased) was allegedly present and it is improbable that she has not intervened. It is submitted that the applicant has been falsely implicated and the investigation being complete, he may be released on bail.

7. The learned APP has submitted that the statement of the complainant clearly makes out a prima facie case of the applicant being responsible for the death of Suraj. He submits that there is a dispute between the complainant and his wife and his in-laws and

looking to the nature of the offence, the applicant is not entitled to bail.

8. I have carefully considered the circumstances and the submissions made.

9. The complaint of Chiknya Pawar prima facie indicates that he had taken the deceased to Gundewadi where there was an incident in which it is the applicant who is alleged to have kept his leg on the face of the deceased who was a boy hardly aged three years. Prima facie, the P.M. report shows the cause of death was due to throttling. There appears to be matrimonial dispute between the complainant and his wife which has led to the in-laws of the complainant having had a dispute with the complainant resulting into the unfortunate death of Suraj. The material including the CDR cannot be examined threadbare at this stage.

10. The supplementary statement of Chiknya Pawar recorded on 6/10/2018 shows that the applicant was trying to follow the complainant after the incident and therefore, possibility of further tampering with the prosecution evidence / witnesses cannot be ruled out.

11. The offence is serious inviting minimum punishment of imprisonment for life. In the circumstances, I do not find that the applicant is entitled to bail. The Criminal Application is accordingly rejected.

C.V. BHADANG, J.