

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

CRIMINAL BAIL APPLICATION NO. 253 OF 2020

Sagar Ajit Thakur

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Ganesh Gole i/b Shirodkar Attet, Advocate for the Applicant.
Smt. Rutuja Ambekar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th MARCH, 2020

PC :

1. The applicant is seeking bail in C.R. No. I-359 of 2019 registered with Vitthalwadi Police Station, Ulhas Nagar, for offences punishable under Section, 302, r/w Section 34 of Indian Penal Code and Section 142 of Maharashtra Police Act. The applicant was arrested on 28th August, 2019. The alleged incident had occurred on 25th August, 2019.

2. The case of the prosecution is that on 25th August, 2019 the FIR was lodged at the instance of the brother of the deceased alleging that the deceased brother Dinesh Sharma was lying in an injured condition. The complainant suspected that the deceased must have been killed by the applicant and co-accused as he used to sit with the accused regularly and they used to have drink together. The

investigation proceeded. The statement of witnesses were recorded. On completing investigation, charge-sheet is filed.

3. Learned counsel for the applicant submitted that there is no cogent evidence against the applicant to establish his involvement in crime. There is no motive to commit crime. There is no eye witness to the incident. The applicant has no reason to kill the deceased. He pointed out the statement of witnesses Manish Wadhava dated 27th August, 2019 and submitted that the said witness has not referred to the presence of the applicant and whereas he has stated that quarrel was going between accused No.1 and the deceased and latter on the deceased was found lying in an injured condition. He further pointed out the statement of Karan Gavai recorded on 29th August, 2019 wherein he has not made reference of the presence of the applicant in the company of the deceased. Statement of Dinesh Dodeja refers to the name of applicant and the co-accused enjoying drink together, however, he has not referred to the presence of deceased. He further submitted that the only evidence which the prosecution relying upon against applicant is recovery of wooden stick and clothes. However, there are discrepancies in the recovery evidence. Prior to the alleged recovery at the instances of the applicant the spot panchnama was recorded. There is no reference to the wooden stick which was allegedly used by the applicant lying at the scene of offence.

Subsequently, at the instance of applicant the wooden stick has been recovered from the same place. There are two cases registered against the applicant. He is on bail in those cases.

4. Learned APP submitted that although there is no eye witness to the incident. There are circumstances which indicate involvement of accused in crime. It is submitted that the statement of witness Manish Wadhava was recorded under Section 164 of Cr.P.C. on 5th September, 2019 in which he has stated that the applicant and the co-accused Ashish Karira were under influence of liquor. They were abusing each other. He closed the shop and left. He saw one person was standing outside the shop. After about one hour while he was returning home he saw people gathered at the place and also noticed that one person was lying in pool of blood. The same person was standing in front of his shop. It is further submitted that the statement of Sagar Patil was recorded on 5th September, 2019. In the said statement he has stated that on 25th August, 2019 call was made from the cell phone of the applicant by Ashish Karira at about 12.30 hours to Sagar Patil. This statement is corroborated by C.D.R. This indicate that the applicant and the co-accused were together on the date of incident.

5. I have perused the charge-sheet. Undisputedly, there is no eye

witness to the incident. The entire case is based on circumstantial evidence. The case of the prosecution is that, the complainant suspected involvement of the applicant and co-accused. The prosecution did not indicate any strong motive for commission of crime. The statement of Manish Wadhava recorded immediately after the incident do not refer to presence of the applicant. The other statement indicate that the accused were consuming liquor. Statement of one of the witnesses who is refer to applicant and the accused No.1 consuming liquor makes no reference to presence of the deceased. There is no strong evidence to show that the applicant was in company with the accused No.1 and the deceased at the time of the incident. The statement of the Sagar Patil at the most he would indicate that at about 12.30 hours call was made from mobile of the applicant to him. Most of the statements were recorded on 5th September, 2019. The statements of the witnesses under Section 161 of Cr.P.C. There is improvisation in statement under Section 164 of Cr.P.C. Thus, there is no strong circumstances to indicate that the applicant was with the deceased at the time when deceased was assaulted. Except the recovery of wooden stick. There is no strong corroborative evidence to continue detention of the applicant in custody in any circumstance. Case for grant of bail is made out.

6. Hence, I pass the following order :

ORDER

- i) Bail Application No. 253 of 2020 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-359 of 2019 registered with Vitthalwadi Police Station, Ulhas Nagar, on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order.
- iv) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)