

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

CRIMINAL BAIL APPLICATION NO.317 OF 2020

Vinay Amarbahadur Singh Applicant

versus

State of Maharashtra Respondent

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- Mr.M. K. Kocharekar i/b. Akhilesh Singh, Advocate for Applicant.
- Mrs.Rutuja Ambekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th DECEMBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.107 of 2019 registered with Aarey Police Station, under sections 302, 120-B of the Indian Penal Code.

2. The FIR is lodged on 06/06/2019 and the Applicant was arrested on 16/06/2019 and since then he is in custody. The investigation is over and the chargesheet is filed.

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3. The prosecution case is that the deceased Ramayanprasad Pandey was having extra-marital affair. His son Ajay Ramayanprasad Pandey was not happy with this relation. He was angry with his father. The incident took place in the night between 05/06/2019 and 06/06/2019. The FIR is lodged by the main accused Ajay himself about murder of his father. The deceased was found lying in Aarey Colony with injuries at around 10.45 p.m. He was taken to Trauma hospital, but he was declared dead before admission. The present Applicant was working as waterman at the same place as that of the deceased.
4. The prosecution case is that the deceased was taken to a secluded spot under some pretext and he was assaulted by a screw driver by his son Ajay. During investigation accused Ajay produced the murder weapon and clothes which he was wearing at the time of incident. It is the prosecution case that the present Applicant, an unknown Rikshaw driver and one Sureshkumar @ Pintu had helped him in commission of this offence.

5. Heard Mr.M. K. Kocharekar, learned counsel for the Applicant and Mrs.Rutuja Ambekar, learned APP for the State.
6. Learned counsel for the Applicant submitted that except mere suspicion there is nothing against the present Applicant. There are statements of two witnesses namely Dheeraj Sanjay Gupta and Adeshkumar Bansal. This shows that the Applicant was on duty at 09.00 p.m. and after some time he was not present, but he came back on duty at about 10.30 p.m. Thus, these statements at the most show that he was absent for 1 ½ hours from duty. There is one circumstance against the present Applicant i.e. recovery of a stone at his instance. Learned counsel for the Applicant submitted that there is no injury of stone reflected in the post-mortem notes. There is no C.A. report as of today showing presence of blood on that stone.
7. Learned APP submitted that there is CCTV footage showing that the deceased had left the place with the present

Applicant in a Rikshaw. She submitted that during a short period between 09.00 to 10.30 p.m. this incident has occurred and therefore this is a strong circumstance against him. She submitted that the C.A. report of the stone as of today is not available and it is still awaited.

8. I have considered these submissions. The post-mortem notes show that there are five injuries. There were abrasions, contusion and two stab wounds besides one haematoma in pleural cavity. There is no bleeding injury caused by a stone, which is attributed to the present Applicant. The stone was found from an open place accessible to all. Therefore the only evidence against the present Applicant is that he was last seen together in the company of deceased and that both of them had left their work place together.

9. The only circumstance of 'last seen together' does not help the prosecution in this case, in the absence of any connection between the Applicant and the main accused Ajay.

The prosecution case is that Ajay held grudge against his father deceased Ramayanprasad and he committed the actual assault. In the entire chargesheet, there is nothing to show common intention between the present Applicant and Ajay. Therefore just because the Applicant was absent from his duty for about 1 ½ hours, that by itself would not connect him with the offence committed by the main accused Ajay. In this view of the matter, since the evidence against the present Applicant is very weak, the Applicant's further detention in custody during the course of trial is unwarranted. He deserves to be released on bail. His guilt or innocence can be decided during the trial. I am inclined to grant bail in these circumstances.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.107 of 2019 registered with Aarey Police Station, the Applicant is directed to be released on bail

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) The Applicant shall attend the concerned police station once in a month till beginning of the trial.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)