

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

CRIMINAL BAIL APPLICATION NO.406 OF 2020

Shyam Damodar Bandal	..Applicant
Vs.	
State of Maharashtra	...Respondent

Mr. Ashok Mundargi a/w. Ms. Swapna Kode / Shruti A. Mundargi, Advocate for the Applicant.
Mr. Arfan Sait, for the Respondent/State.

**CORAM : C.V. BHADANG, J.
DATE : 24th SEPTEMBER, 2020
(Through Video Conferencing)**

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Kamble

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P.C.

. This application is placed before this Court as the regular Bench (S. K. Shinde, J.) has expressed inability to take up the matter.

2. The applicant (accused No.3) alongwith co-accused has been chargesheeted in connection with C.R. No.I-27/2017 for the offence punishable under Section 302, 324, 326, 143, 147, 149 and 504 of IPC registered at Tokawade Police Station, District Thane. There are in all 21 accused in the said offence.

3. The prosecution case as disclosed from the complaint lodged by Sachin Dalvi, who is the brother of deceased Nitin Dalvi shows that there is a long standing dispute between the

two families namely Dalvi Family and the Bandal Family over a piece of land in respect of which a case is pending before the Civil Court. The incident in question happened on 31/3/2017 at about 4.00 p.m. when the complainant alongwith his mother Ratna and deceased Nitin were constructing a house on the land allotted by the Government. It is said that at that time the applicant alongwith co-accused came on the spot and accosted the deceased as to how the construction is being made and further asking him to stop the construction claiming that the land is belonging to them. It is said that Nitin did not heed to the request and continued with the construction. It is the material prosecution case that thereafter the deceased was assaulted with bamboo sticks and iron rod etc., on his back and legs and fist and kick blows. As a result of the same, Nitin sustained grievous injuries and succumbed to the same during treatment on 11/4/2017. In the incident, the mother of the complainant Ratna also sustained injuries.

4. In so far as Nitin is concerned, he had sustained CLW, some contusions, fracture of left elbow and right shoulder and fracture of 3rd to 6th ribs. The cause of death is shown as “hypovolemic shock due to hemopnumothorax with polytrauma due to multiple fractures.”

5. The applicant had approached the learned Sessions Court seeking bail and the learned Sessions Judge has rejected the same on 23/11/2017. The applicant claims that this is his first bail application filed before this Court.

6. I have heard Mr. Mundargi, the learned Senior counsel for the applicant and Mr. Sait, the learned APP for the respondent / State. With the assistance of the learned counsel for the parties, I have gone through the chargesheet and the statements of the witnesses and the relevant record.

7. The learned Senior counsel for the applicant submitted that except accused No.1 and the present applicant, all other accused in this case have been released on regular / anticipatory bail either by this Court or by the learned Sessions Judge. In particular, it is submitted that the applicant is entitled to bail on the ground of parity with co-accused Suraj Bandal and Murlidhar Bandal. The learned Senior counsel has taken me through the order at 14/8/2019 passed by this Court (Revati Mohite Dere, J.) in Criminal Application No.2084/2018 and others in order to submit that there is a clear case of parity which arises in the matter. It is submitted that there was no pre-meditation which can be attributed to the applicant. Admittedly, there is a long standing dispute between the two families over the said land and the incident is alleged to have happened when the complainant alongwith the deceased and their mother were attempting to make certain construction which was objected to.

8. The learned APP has submitted that the role of the present applicant is not similar to the role of co-accused Murlidhar and Suraj who have been released on bail by this Court. The learned APP submitted that unlike the present applicant there was no recovery from the accused, with whom, parity is claimed. He

also submitted that in the order dated 14/8/2019, this Court has not dwelt upon the role of the co-accused Murlidhar and Suraj and therefore the submission based on the ground of parity is unacceptable. It is also submitted that the applicant was absconding.

9. Mr. Mundargi, the learned Senior counsel, in reply has submitted that the applicant was never absconding in as much as he had approached the learned Sessions Judge, for anticipatory bail vide Application No.628/2017 which was rejected on 3/5/2017. It is submitted that the applicant was arrested and the alleged recovery of iron rod is made after a period of three months.

10. I have carefully considered the circumstances and the submissions made. It is not in dispute that except the present applicant and the accused No.1 all other accused have been released on regular / anticipatory bail either by this Court or by the Court of Sessions. In particular, accused Murlidhar (accused No.2) and accused Suraj (accused No.4) alongwith one Sachin Dalvi have been released on bail by this Court on 14/8/2019 in Criminal Application No.2084/2018 and 2110/2018. Prima facie, it appears that the allegation against Murlidhar is that he made assault by wooden rod. In so far as accused Suraj is concerned, the assault is said to be by an iron rod which is similar to the role attributed to the present applicant. It is true that there is no recovery from the accused Nos.2 and 4. However, that by itself in my considered view would not be

sufficient to refuse parity in as much as at this stage it is not shown that the rod was having any other incriminating evidence such as human blood stains. Thus, in my considered view, the ground of parity deserves to be accepted.

11. It is made clear that the observations made herein are prima facie, and the Trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. In the result, the following order is passed.

ORDER

1. The Criminal Application is allowed.
2. The applicant be released on bail on executing a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.
3. The applicant shall report to the Investigating Officer of the concerned Police Station, on the first Saturday of every month, between 10.00 a.m. to 11.00 a.m. till the conclusion of the trial.

4. The applicant shall not enter the jurisdiction of village Bandalpada for a period of 18 months from the date of their release.
5. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
6. The applicant shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station, in writing.
7. The applicant shall file an undertaking with regard to Clause (ii) to (v) in the Trial Court, within two weeks of their release.
8. The applicant shall co-operate in the conduct of the trial and attend all the dates before the Trial Court, unless exempted by the Trial Court.
9. The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.