

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

**BAIL APPLICATION NO.1435 OF 2019**

Somnath Permshankar Pandey

.. Applicant

***Vs.***

State of Maharashtra

.. Respondent

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Mr.Nilesh R. Pandey a/w.Mr.Sameer Vispute, Mr.Gajanan A. Sangle and Mr.Rahul Bhosale i/b. M/s.Equa Juris, Advocate for the Applicant.

Ms.A.A. Takalkar, APP for Respondent – State.

API Vivek Dabholkar, Kharghar Police Station, present.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : DECEMBER 18, 2020.**

**P.C.:**

The applicant is seeking his release on bail in connection with C.R.No.I-50 of 2018, registered with Kharghar Police Station, Navi Mumbai for the offences punishable under Sections 302, 452 and 120(B) read with 34 of Indian Penal Code (“IPC”, for short).

2                      The charge - sheet in this case is already filed and the case is pending before Court of Sessions Raigad at Alibaug vide Sessions Case No.51 of 2018. First Information Report (“FIR”, for

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short) in this case is lodged on 6<sup>th</sup> February, 2018, by one Yogendra Chhediram Kanojia, who was brother of the deceased. He has stated in his FIR that on 6<sup>th</sup> February, 2018, at about 07:12 p.m., he was informed that his brother Mahendra Kanojia was assaulted by three unknown persons by entering in his shop. The informant's brother succumbed to his injuries. Postmortem notes show that the deceased had suffered as many as 27 injuries and the cause of death was mentioned as "Death due to multiple injuries on body with superficial to deep burns 15-20%". The prosecution case is that the deceased was assaulted with weapons like iron rods and he was also attacked with acid. In all, six accused were arrested. The motive behind the murder was enmity between one Lalji Prasad and the deceased.

3            Learned advocate for the applicant submitted that there is no material against the applicant to show his involvement in the crime. The Sessions Court while rejecting the application for bail has wrongly observed that the statement of witnesses reveal that the applicant accused has directed the other accused to go to the shop of the deceased Mahendra Kanojia to threaten him and latter on the said accused went to the shop of deceased and assaulted him, which resulted into his death. There are no statements involving him in incident of assault or instigating co-

accused to assault deceased. It is further submitted that the applicant is employed with the factory at Kalamboli. On 6<sup>th</sup> February, 2018, which is the date of incident and 7<sup>th</sup> February, 2018, the applicant was on duty. He relied upon the attendance sheet. It is further submitted that the co-accused Sunil Ramprasad Bharti, who is similarly placed has been granted bail by this Court vide order dated 6<sup>th</sup> August, 2019. The applicant is in custody from 8<sup>th</sup> February, 2018. There are no criminal antecedents against him.

6            Learned APP submitted that the involvement of the applicant was disclosed during the course of investigation. On instructions, she did not dispute that the involvement of the applicant was based on the statement under Section 27 of the Evidence Act. There is no eye witness to the incident. It is further submitted that the plea of alibi cannot be considered at this stage. Grant of alibi in respect to the co-accused who had been granted bail was taken into consideration on the basis that there was a statement of employer, that he was on duty.

7            There is no eye witness to the incident. There is no evidence of any witness indicating that the applicant was present at the scene of offence and or that he instigated others to assault

the deceased. There is no enmity between the applicant and the deceased. Assuming that the plea of alibi taken by the applicant is a disputed question of fact, on the ground that there is no substantial evidence to show his involvement, bail can be granted to the applicant. The co-accused Sunil Ramprasad Bharti had granted bail by this Court vide order dated 6<sup>th</sup> August, 2019 in Criminal Bail Application No.575 of 2019. In the circumstances, I pass the following order:

**:: ORDER ::**

- (i) Bail Application No.1435 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-50 of 2018, registered with Kharghar Police Station, which is subject matter of Sessions Case No.51 of 2018, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report concerned police station once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

- (iv) The applicant shall furnish details of his place of residence to the investigating officer;
- (v) Bail Application No.1435 of 2019, stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**