

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1844 OF 2019

Vishal B. Takale

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Jayant J. Bardeshkar, Advocate for the applicant.

Mr. S.H. Yadav, APP for Respondent-State.

CORAM : SANDEEP K. SHINDE, J.**Wednesday, 11th March, 2020.****P.C. :**

Heard.

1. Applicant is seeking enlargement on bail in Crime No. I - 36 of 2018 registered with Paud Police Station, Pune for the alleged offences punishable under Section 302 r/w 34 of the Indian Penal Code, 1860 ("IPC" for short) alongwith Section 3 r/w 25 of Arms Act, 1959.

2. The alleged incident had occurred on 02.04.2018. The report was filed by the brother of the deceased, whereupon the subject crime was registered against four unknown persons. On the

next day, the supplementary report of complainant was recorded, wherein he had disclosed the names of one Nilesh Gawade and Vishal (present applicant) and other four to five unknown persons. On 03.02.2018 statement of three eye witnesses were recorded, who disclosed about the presence of the applicant on the spot and that the applicant had come in a white colour car allegedly driven by the present applicant. All these witnesses had seen the present applicant on the spot and his participation in the alleged crime.

3. It may be stated that though the statements of eye witnesses were recorded on 03.02.2018, the applicant came to be arrested only on 17.07.2018. It appears, the eye witnesses had filed an affidavit on 31.02.2018 wherein they had pleaded the ignorance of the incident.

4. Learned counsel for the applicant submits that the co-accused Nilesh, who had allegedly threatened the deceased has been released on bail and further that since the trial is not likely to commence in the near future and additionally that there are no criminal antecedents against the applicant, he may be released on bail.

5. I have perused the final report. Three eye witnesses have categorically disclosed the

presence of the applicant on the spot. They had disclosed the applicant had come in the white colour car allegedly driven by him on the spot where the deceased was assaulted. The postmortem report shows the deceased had suffered several injuries and cause of death as reported was due to multiple injuries particularly head injury and external as well as internal injuries. Besides it may be stated that these eye witnesses had filed an affidavit and pleaded ignorance of the incident which they had narrated in their statement recorded on 03.02.2018. This fact, prima facie, indicates that the applicant had influenced the eye witnesses. The offence registered against the applicant and the co-accused is punishable with imprisonment for life or death. At this stage I have no reason to disbelieve the statement of the eye witnesses and therefore the affidavit filed by them on 31.03.2018 is to be ignored and kept out of consideration. Though it is submitted that the co-accused Nilesh has been released on bail, however the fact remains the three eye witnesses did not disclose the name of Nilesh in their statements recorded on 03.02.2018.

6. Considering the nature of the accusation and the role attributed to the applicant, in my view it is not a fit case to release the applicant on bail, application is hereby rejected.

7. It is made clear that the observations made hereinabove shall be construed as expression of opinion only for the purpose of refusal bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)