

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2355 of 2019

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P.
Tilak

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Chandrashekhar G. Sahi	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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Mr. Sachin Thombare with Rohan Hogle for the applicant.
 Mr.P.H. Gaikwad, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd DECEMBER 2020

P.C:-

1 In connection with C.R. No. 108 of 2016 registered with Kamshet Police Station, Pune, the applicant is charge-sheeted for the offences punishable under Sections 302, 143, 147, 149, 324, 504, 506 of the IPC. He is seeking his release on bail in the said C.R since he is arrested on 9th October 2016 and inspite of filing of charge-sheet, till date, no charge is framed. It is the submission of the learned counsel for the applicant that his long incarceration deprive him of his personal liberty and though he is charge-sheeted for a serious offence of murder, he cannot be indefinitely kept

Tilak

behind bar and this amount to violation of his personal liberty granted under Article 21 of the Constitution.

2 On 8th October 2016, a complaint came to be lodged by one Prashant Sashte, resident of Pune. In his complaint, he state that on 8th October, while he was enroute to his house, he received a phone call from one Sangram Hitape and he expressed his desire to join him in having a glass of beer. Both of them approached Babbi Dhaba on Sangram's motorcycle which is situated on Old Mumbai-Pune route. The duo was joined by another friend Nikhil Gaikwad and they reached Babbi Dhaba at around 10.30 p.m. They ordered beer and food and on finishing the same, the waiter put before them bill of Rs.900/-. When the complainant went to the counter, he realized that he has only Rs.500/- with him. The waiter kept on demanding the remaining amount and the complainant pleaded before him that he would pay the remaining amount later. At that time, the person sitting on the counter expressed his anguish and is alleged to have stated that when they had no money, why did they come to the restaurant. This resulted into a verbal altercation and the person on the counter is alleged to have started abusing and restrained them from leaving the dhaba.

They were confined in a room.

3 On the next day at around 4.30 p.m, it is alleged that when they started to leave the room, a person aged 30 to 35 years restrained them from leaving and hurled verbal abuses. He started assaulting the complainant by hand. At the same time, 8 to 10 people walked out of the dhaba and it is alleged that the person who was wearing white shirt was carrying wooden rod and another person wearing blue shirt was armed with iron rod. They started abusing and assaulting by means of weapons they were carrying. Sangram was hit by iron rod in his head and he fell down. The complainant and Nikhil were also assaulted. The description of the persons who assaulted was given with reference to their clothes and approximate age and in some case, physical features are mentioned in the complaint. Nikhil received injuries in his head, face, back, whereas Sangram received injuries in his head, legs and hands and he was bleeding. Somebody made a phone call to the police and the complainant along with others were carried in the ambulance.

The supplementary statement of the complainant was recorded on the very same day after the arrest of the assailants from the Dhaba and he named 8 persons including the present applicant as accused no.1.

4 Sangram succumbed to the injuries while being taken to the hospital and cause of death is ascertained as grievous injury to vital organ 'Brain'. Column No.17 of the post mortem report refer to 13 injuries which are in the nature of abrasion and contusions. It also mention about contusion on the left scapular region. Barring the ligature mark which is injury no.1 on the right lateral side of neck 12 cm x 1 cm which is a grievous injury, all other injuries are described to be simple. Section 302 was thus invoked in the present C.R. The complainant along with the other injured were also referred for medical examination and their medico legal certificates are compiled in the charge-sheet.

During the course of investigation, the statement of witnesses have been recorded which include one Madan Thakur who was present in his saloon in the wee hours on 9th October 2016 when he heard a quarrel taking place. When he came out, he witnessed that the watchman, waiter and three other persons were having a verbal spat in front of Babbi Punjabi Dhaba. He state that he saw watchman Chandrashekhar G. Sahi (applicant) hit one person in his head. Resultantly, the said person fell down. He has also stated that other persons were being assaulted by bamboo sticks. Pertinent to note that the witness has stated that the

other two persons were assaulted by Jay Narayan Sahi and waiter Ranjeetsingh Bhatti by means of bamboo sticks and Kamal Thapa, Harka Bahadar, Malki Singh and Saajan and Rajendra were assaulting the person who had fallen down by means of kicks and blows and Ranjeet and Jay Narayan were seen assaulting the said person by means of wooden sticks in their hands. On the similar lines is the statement of Biju Lichang who is engaged into the activity of removing the punctures from the wheels of the trucks. On the date of incident, he was present in his shop and at around 4.30 pm, he could overhear a quarrel taking place in Babbi Punjabi Dhaba, he narrated the incident as witnessed by him. The applicant is alleged to have assaulted one person by means of an iron rod and his statement is also to the effect that when this man fell down, Sajan and Rajendra assaulted him by kicks and blows and Ranjeetsingh and Jay Narayan were assaulting him by means of sticks in their hand. Gurmithsing S. Gill who was sleeping in his garage also gave a similar version.

5 The post mortem report has opined his cause of death to be a head injury and grievous injury to the vital organ brain. There are 13 injuries noted in column no.17 and it refers to the left paraumbilical region as well as left mid

axillary region. The two injuries are in nature of contusion in left scapular region, 8 cm and 7 x 7cm respectively. These injuries are said to have been caused by hard and blunt object. The Investigating Officer, on seizure of the weapon used during the incident, which include one 24 inches long iron pipe rod as well as two bamboo sticks which were recovered from the spot, sought an opinion whether the aforesaid weapons can be said to be responsible for the injuries mentioned in the post mortem report and the Medical Officer of PHC, Khadkala, on 9th October 2016, has responded in the positive.

6 Co-accused Sajansingh Satnamsingh who is alleged to have assaulted the deceased with fist and kick blows has been released on bail (Justice Revati Mohite-Dere – Bail Application No.126/17) with an observation that whether or not Section 149 of the IPC will apply or not, will be decided by the trial Court. By recording that there are no antecedents, co-accused is released on bail on 31st March 2017.

7 The application filed by the present applicant is rejected by the Addl. Sessions Judge on the ground that the applicant is the main accused who has assaulted the deceased

by iron rod. Prima facie, on perusal of the statement of the three eye witnesses recorded by the prosecution and compiled in the charge-sheet would reveal that after the deceased fell down after the applicant is alleged to have assaulted him in his head by means of an iron rod, he was also assaulted by Satnamsingh and Rajendra by fist and blows and also assaulted by Ranjeetsingh and Jay Narayan Saha by means of wooden stick in their hand. The complainant and the witnesses do not state on which part of the body they assaulted. However, since the column no.17 of the post mortem report contain two injuries to the left scapular region and the cause of death is grievous injury to vital organ 'brain', it cannot be discerned at this stage that the injury given by the applicant has proved to be fatal and it cannot be said with certainty that it is only this injury which has resulted into death of the injured.

8 The applicant is languishing in jail since 9th October 2016 and the learned APP, on instructions, state that though the charge-sheet is filed, charges are not yet framed. Four years down the line, in normal situation, the charges are not framed. Almost 10 months of this year 2020 are lost in the pandemic when working of the trial Courts had come to a

stand still. Though it is now resumed, it cannot be said with certainty as to when the trial could commence and would be concluded. Long incarceration, prejudicially affects the right of the applicant. Therefore, taking prima facie view of the matter and in light of the fact that the applicant is deprived of his liberty since last four years, imposing the stringent condition, he is entitled to be released on bail subject to he being available for the purpose of facing a trial. Hence, the following order :-

ORDER

- (a) The Applicant – Chandrashekhar Sahi shall be released on bail in connection with C.R.No. 108 of 2016 registered with Kamshet Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

- (c) The applicant shall not enter into the jurisdiction of Pune city till the conclusion of the trial, except for marking his presence on first Monday of every month in Kamshet Police Station between 10.00 am to 5.00 p.m.
- (d) The applicant shall not leave the State of Maharashtra during the pendency of trial and without permission of the Investigating Officer and will keep him updated about his current address of residence and place of work since the applicant is a permanent resident of State of Bihar.

9 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J