

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

BAIL APPLICATION NO.2669 OF 2019

Daddu Siyaram Paswan ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Nitin Sejpai with Mrs. Pooja Sejpai for the Applicant.
Ms. P.P.Shinde, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 28th JANUARY, 2020

P.C. :

Heard.

2 Applicant is seeking his enlargement on bail in Crime No.I-337 of 2017 registered with Bhiwandi City Police Station for the offences punishable under Sections 302, 324, 452, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code, 1860.

3 Investigation is over. Final report has been filed.

4 One of the co-accused Fulkaran Mohan Paswan, has been released on bail by this Court on 21st August,

2019.

4 Complainant Bablu Patel, is brother-in-law of the deceased Kamleshkumar. Alleged incident had taken place on 19th October, 2017 at 9 p.m. wherein it is alleged that when the complainant and the deceased were proceeding to have dinner at hotel, one acquaintance of the deceased stopped him and started quarreling with the deceased over a money matter. It is alleged, soon thereafter an altercation took place wherein co-accused Ramsheela, threatened to kill the deceased. Complainant in the given situation, being afraid of the threats, did not proceed for the dinner and returned to factory along with Kamleshkumar. It is alleged, after sometime, co-accused Ramsheela, Kanhaiya and Radheshyam and others came to the factory and started abusing them pursuant to which, the deceased came out and confronted Ramsheela. Complainant alleged, while Kanhaiya and Radheshyam assaulted the deceased with fist and kick blows, Ramsheela assaulted deceased on head

with wooden log, which was lying around in the factory premises, as a result of which, deceased fell on the ground. It is alleged that when the complainant attempted to pacify the quarrel, he was also assaulted.

5 In the post-mortem report, the autopsy surgeon noted single contused lacerated wound on right parietal bone region, 4"x1"x1" brain deep. Opinion as to probable cause of death was, "*hemorrhagic shock due to head injury by hard and blunt object*".

6 It is submission of the learned counsel for the applicant, that, Ramsheela (Co-accused) inflicted a blow of wooden log on the head of the deceased, is corroborated by the injury noted in Clause 17 of the post-mortem report. The learned counsel, therefor, submitted in the absence of other injuries, on the person of the deceased (except one injury on the head) narration of the eye witnesses, that co-accused assaulted deceased with bamboo stick was neither probable and nor acceptable. It is the next submission that in complaint filed at the first instance by injured witness,

the name of the applicant had not been disclosed. It is further submitted that since investigation is over and trial is not likely to commence and conclude in near future, applicant may be released on bail by imposing suitable conditions for securing his presence for the trial.

7 As against this, the learned APP has relied on the statement of eye witness Suraj Kumar Patel, co-worker of the deceased who had witnesseth, that the applicant and co-accused were assaulting deceased by the wood log and bamboo.

8 It may be stated that the Autopsy Surgeon did not notice other injuries on the person of the deceased except one, injury as noted in Column No.17 of the post-mortem report and, therefore, prosecution case that the applicant and others assaulted the deceased by sticks and bamboo prima-facie, lacks corroboration.

9 Additionally, it may also be noted that it is not prosecution case that applicant had gone to the factory premises, armed with stick or wooden log and therefore,

prima-facie, facts suggest it was not pre-mediated offence.

10 In view of nature of accusation, role attributed to the applicant and the fact that applicant is in custody since October, 2017 and the trial is not likely to commence or conclude in near future, he is directed to be released on bail. Hence, following order:

ORDER

(i) The applicant be enlarged on bail in Crime No. I-337 OF 2017 registered with Bhiwandi Citi police station, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, till charge is framed;

(iii) The applicant shall inform his 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;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing,

unless exempted by the trial Court;

(vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the applicant, in the Registry of the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of applicant's bail.

11 The application is allowed and disposed of in above terms.

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

(SANDEEP K. SHINDE, J.)