

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3243 OF 2019

Dashrath Namdeo Gaikwad	...Applicant
V/s.	
The State of Maharashtra	...Respondent

Mr. Aniket Nikam i/by Mr. Vivek N. Arote, Advocate
for the applicant.
Mr. S.H. Yadav, APP for Respondent-State.

CORAM : SANDEEP K. SHINDE, J.

Friday, 13th March, 2020.P.C. :

Heard.

1. Applicant is seeking his enlargement on bail in connection with Crime No. 226 of 2018 registered with Panchvati Police Station, Nashik for the alleged offences punishable under Sections 302, 307, 324, 452, 143, 147, 148, 149, 120(b) of the Indian Penal Code, 1860 ("IPC" for short) alongwith Section 4(25) of Arms Act, 1959.

2. In the incident dated 13.06.2018, Anil Gunjal died due to combined effect of craniocerebral damage, due to blunt and sharp force

injuries to head and haemorrhagic shock due to multiple stab injuries to chest as reported by the Orthopaedic Surgeon.

3. In the postmortem report, in column no. 18 following two injuries were found and noted by the Surgeon;

(i) Fracture of left cheek bone (zygomatic bone) comminuted type fracture with effusion of blood. Comminuted fracture of right frontotemporal bone with effusion of blood. Fracture of occipital bone corresponding to injury no.4 and 5 with effusion of blood at margins.

(ii) Extradural with subdural hematoma in bilateral frontotemporoparietal region. Multiple contusions.

4. Besides Sagar Mane, a person injured in the assault, had suffered following injuries;

blunt trauma on head, scalp hematoma with deep cuts mandible fracture with extradural hematoma midline with multiple abrasion.

5. Complainant is brother of deceased and eye witness to the incident. It is alleged that the applicant was armed with iron rod and had assaulted deceased Anil and injured, Sagar Mane. A statement of injured discloses presence of the applicant allegedly armed with iron rod and assaulted him.

6. Learned counsel for the applicant has relied on order passed by this Court in Criminal Bail Application No. 437/2019 whereby the two co-accused Sandeep and Rahul were directed to be released on bail. Additionally, he has relied on another order passed in Criminal Bail Application No. 1170/2019 whereby Ambika (co-accused) has been directed to be released on bail. Learned counsel for the applicant therefore, seeks release of the applicant on the principle of parity.

7. I have perused both the orders. So far as Sandeep and Rahul (co-accused) are concerned, it may be stated as per the aforesaid order, they were allegedly armed with wooden stick and had assaulted the deceased and the injured. It may be stated that the present applicant was armed with iron rod; whereas so far as Ambika (co-accused) is concerned, the role attributed to this accused is that she had thrown chilli powder and had facilitated others to assault the deceased and injured. Though it is submitted, assuming but without admitting that the applicant was armed with iron rod, but no specific role has been attributed to him as has been attributed to Jairam who allegedly, inflicted blow of iron rod on the head of the deceased, in my view, this submission requires no consideration at this stage for the simple reason that the Autopsy Surgeon had reported that the death of Anil was "due to

combined effect of craniocerebral damage". Besides at this stage, it is not possible to ascertain as to whether, the alleged blows given by the applicant had aggravated the cause of death of the deceased Anil, and the same ought to be determined at the trial. The fact remain this applicant was armed with iron rod, a deadly weapon. It is also submitted that there is no recovery of iron rod allegedly used by the applicant and no blood stains found on the clothes of the applicant where he had assaulted. However, in my view, I have no reason to disbelieve the statement of the complainant and the injured at the stage who have attributed positive role and attributed overt act to the applicant for causing injuries to the deceased by the iron rod as well as to co-accused Sagar Mane.

6. In view of this, the application requires no consideration, it is rejected accordingly.

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

(SANDEEP K. SHINDE, J.)