

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3402 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2020

Arjun Rambhau Shrirame, Age 21 years,
R/o.Sidharth Nagar, Kurduwadi, Tal.Mhada,
Dist.Solapur (Presently lodged in jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Pavan D. Udbale with Yogesh Birajdar i/by Vaibhav V. Ugle for
applicant.

Mr.H.J.Dedhia, APP for State.

None present for intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 31st January 2020

PC :

1. This is an application for bail in CR No.254 of 2018 registered with Kurduwadi Police Station for offences under Sections 302, 120(B), 504, 506, 143, 147, 148, 149, 427 of Indian Penal Code and under Section 4(25) of Arms Act.

2. The prosecution case is that the deceased Vicky Gaikwad was arrested in CR No.169 of 2018 registered with Kurduwadi Police Station for attempting to kill accused no.1 in the present case. He was granted bail by the Sessions Court, Solapur on condition that he shall attend Kurduwadi Police Station. On 17th June 2018 Vicky Gaikwad had attended Kurduwadi Police Station and then went to the residence of his relatives. While returning back it was noticed that the accused had gathered in front of the house. Thereafter informant, deceased and three other persons proceeded further and

they passed toll plaza situated at Kurduwadi bypass. At that time 10 to 12 motorcyclists came from opposite direction with deadly weapons. The accused started pelting stones towards vehicle. The driver of the vehicle tried to escape with the car. However, the accused approached them. The inmates of the vehicles including the deceased alighted from the vehicle and started running for escape. The deceased was chased by the accused who were armed with deadly weapons and assaulted him. He succumbed to the injuries. On the statement of Santosh Mane, the FIR was registered on 17th June 2018. The applicant was arrested on 18th June 2018.

3. Learned counsel for applicant submitted that the applicant has been falsely implicated in this case on account of rivalry. There are no criminal antecedents against him. There is no recovery of weapon or blood stained clothes from the applicant. The first informant has not named the applicant in the complaint as assailant. He was subsequently named in the supplementary statement. The role attributed to the applicant was vague. The statement of Aashish Rajput has named the applicant as person amongst other accused with weapon, however, he has not seen the actual assault. In the statement u/s 164 of CrPC, the said witness has not attributed specific overt act to the applicant. The statements of other witnesses are vague. The witness Rajat has not named the applicant as assailant in his statement u/s 161 as well as Section 164 of CrPC. The statements of two other witnesses who have attributed overt act to the applicant having assaulted the victim, were recorded in October-2018 i.e. after a period of about four months from the date of incident. There is no CCTV footage of the place of incident. There is no other corroborative evidence to show involvement of applicant.

4. Learned APP submitted that the applicant has been shown to be present at the place of incident and participant in the crime. There is consistent evidence with regards to the presence of applicant. The first informant has stated that he was amongst the group of accused on the day of incident having some discussion which was followed by assault. The other witnesses have referred to the applicant as participant in the crime. The applicant was armed with weapon. The victim was subjected to brutal assault as a result of which he succumbed to the injuries.

5. I have perused the charge sheet. The incident had occurred on 17th June 2018. The first informant is the eye witness to the incident. He has referred to the name of applicant as the person who was amongst the group of accused standing on the road and having some discussion. They were not armed with weapon. According to him, the deceased, complainant and others then proceeded by their vehicle. They were followed by the accused who were armed with weapons like sword and the deceased Vicky was chased by them and assaulted. No injuries were caused to the complainant and other inmates. The applicant, however, is not stated to be one of the assailant in the FIR. Thus, presence of applicant at the place of assault is not referred to by the complainant. His supplementary statement was recorded on 21st August 2018. In the said statement he has mentioned that about 10 to 12 persons had assaulted the deceased Vicky Gaikwad. In the said statement he has named the applicant as one of the person amongst other accused. The statement of Aashish Rajput was recorded on 21st June 2018. He was with the deceased and the complainant. He has stated that 10

to 12 persons came on motorcycles and assaulted the deceased. He was driving the vehicle. He has named the applicant as assailant person armed with weapon. However, from his statement it is apparent that he has not seen the actual assault, although he has named the group of persons who were armed with weapons. His statement u/s.164 was recorded subsequently which is also in consonance with the statement u/s 161 of CrPC. The statement of Rajat was recorded on 10th July 2018. He was allegedly accompanying the deceased and the complainant. He has not named the applicant as assailant. The statement u/s 164 of CrPC was recorded in which he has not stated that the applicant is amongst the assailants. Similarly statements of two other eye witnesses were recorded, namely Sahil Shaikh and Aamir Takkal. They have referred to the applicant as one of the assailant amongst others. It is pertinent to note that the statements of these two witnesses were recorded after a period of about four months. It will be relevant to note that the persons who were accompanying the deceased and whose statements were recorded after the incident, have given versions which are contrary to the versions of these two witnesses.

6. Learned APP had submitted that the order passed by the Sessions Court refers to CCTV footage. However, he did not receive any instructions in that regard from the investigating officer. Learned counsel for applicant pointed out the statement of Namdev recorded on 26th June 2018 and Krishna recorded on 27th June 2018 wherein it was mentioned that the CCTV footage from the camera installed in the shop premises was taken into custody by police. It is, however, submitted that the said CCTV footage is not in respect of the place of assault. There are no criminal antecedents against applicant. He is

in custody since 18th June 2018. Considering the circumstances, case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3402 of 2019 and Interim Application No.1 of 2020 are allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.254 of 2018 registered with Kurduwadi Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Kurduwadi Police Station once in a month on every first Saturday between 10 am and 12 noon till conclusion of trial;
- (iv) The applicant shall not tamper with evidence and shall not approach the witnesses;
- (v) The applicant shall attend the Trial Court proceedings regularly, unless exempted for some reason by Trial Court.

(PRAKASH D. NAIK, J.)

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