

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

BAIL APPLICATION NO. 3421 OF 2019

Venkatesh Armugam Chelliya -Harijan	.. Applicant
Vs.	
The State Of Maharashtra	.. Respondent

Mr.S.V. Marvadi a/w. N. M. Nadar, advocate for Applicant.
Smt. Veera Shinde, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.
DATE : 18th DECEMBER 2020

PC.

1. This is an application for bail in connection with C.R. No. 43 of 2017 registered with Aarey Police Station, Mumbai under Section 302, 114, 120-B read with 34 of the Indian penal Code (for short "IPC"). The applicant was arrested on 07th April, 2017.

2 The prosecution case is that the deceased used to run security agency. Complainant is wife of the deceased. In August 2016 license to conduct security business was granted to deceased. He received tender for security agency in film city area. Mr. Raja Chellaya and Mr. Durai Chellaya were also engaged in the similar business at film city. Since they were not granted license they had grudge against the deceased. On 05th

April, 2017 the deceased Virpandiyan Harijan had returned home and looking tense. He informed complainant that Mr. Raj and Durai and their friend had threatened him over issue of security license. There is threat to his life. On 06th April, 2017 at about 11.15 am people from nearby Chawl were running towards Aarey lane. The complainant also proceeded there. She noticed that her husband was in injured condition. He was taken to hospital. Shanmugan Tangvel Harijan @ Bonda informed the complainant he saw her husband running inside gate of Aarey dairy. Venkatesh and two persons came running after him. Venkatesh ran behind deceased and gave jerk to him and he fell down. One of them assaulted deceased by knife on his stomach and Venkatesh and another person assaulted by cement brick. First information report was registered under Section 302 read with 34 of IPC. Her supplementary statement was recorded on 11th April, 2017.

3 During the course of investigation statement of Shanmugam Harijan was recorded on 06th April, 2017. Statement of Velaidan Muragan was recorded on 12th April 2017. After completion of investigation, charge sheet was filed.

4 Learned counsel for the applicant submits that the applicant has not played any role in assaulting deceased. The applicant is in custody from 17th April, 2017. The accused allegedly having enmity with the deceased, namely Durai Chellaya Harijan and Mohd. Ali Abdul Jabbar Shaikh were granted bail by the Sessions Court. The other accused Vicky Raja Harijan and Pravin Shaktivel Arjun were also granted bail by the Sessions Court. It is further submitted that the witness Velaidan Murgan had identified accused No.6 but failed to identify the applicant. The eye witnesses have not attributed role of assault to applicant. No weapon is recovered from the applicant. The role of Haidar Shaikh whose application is rejected by this Court differ from applicant.

5 Learned APP submitted that the offence is serious. The presence of the applicant has been established through the version of the witnesses. Witness Sanmugam Harijan and Valaidan refers to participation of applicant. The offence is serious. Victim was brutally murdered. Blood stained clothes were recovered from applicant. Velaidan attributed role to applicant.

6 Complainant is not eye witness to the incident of assault. Her version is based on information given by Shanmugam Harijan and others. Eye witness Shanmugam Harijan stated that he saw Veera Pandian (deceased) running. He had kept his hand on abdomen. He told him that his brothers children are assaulting him. His nephew Venkatesh came running. The witness stopped Venkatesh. At that time two boys came running. One of them assaulted Veera by sickle. The other person assaulted Veera by knife. Haider assaulted Veera by cement brick. other eye witness Vailadan Murgan in his statement dated 12th April 2017 stated that Veera (deceased) came inside dairy compound. He had kept his hand on abdomen. He was followed by one boy. Two other boys came running. They were armed with knife and sickle. Shanmugam accosted first boy who had followed Veera. He managed to relieve himself and caught Veera. Two other boys assaulted Veera by knife and sickle. Sanmugam has named the applicant and Velaidan has not named him. The role attributed by both witnesses to applicant differ. Babu Kakad working as watchman has not witnessed, the incident of assault. According to him Velaidan Murgan told him Venkatesh and others assaulted deceased by knife and sickle. The role of assault

by knife and sickle is attributed to other accused by eye witnesses. Parade was conducted on 16th May, 2017. Applicant was not identified by Velaidan Murgan. Recovery of clothes was after six days from arrest. Armugam Harijan, Durai Harijan, Vicky Harijan, Pravin Harijan, Mohd. Ali Shaikh, Virputran Harijan were granted bail by Sessions Court. Accused Haidar Ali Shaikh was refused bail by this Court, vide order dated 19th September, 2019 (Bail Application No.1952 of 2019). He was identified by the witness in parade. He had given extra judicial confession. Hence, the following order :-

:: O R D E R ::

- (i) Bail Application No.3421 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 43 of 2017, registered with Aarey Police Station, Mumbai, on furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report Aarey Police Station, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m. till further order;

- (iv) Applicant shall not tamper with the evidence;
- (v) The applicant is permitted to furnish cash security in sum of Rs. 25,000/- for a period of Eight weeks in lieu of surety;
- (vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)