

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

CRIMINAL BAIL APPLICATION NO.518 OF 2020

Sachin Arvind Nerlekar Applicant
Versus
The State of Maharashtra Respondent

Mr. Tejas Hilage, Advocate for the Applicant.
Mr. S.H. Yadav, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th JANUARY, 2021
[Through Video Conference]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.215/2019 dated 18.10.2019 registered at Shahpur Police Station, District – Kolhapur under Sections 302, 323 read with 34 of the Indian Penal Code. The Applicant is arrested on 18.10.2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Shri Tejas Hilage, learned counsel for the Applicant and Shri S.H. Yadav, learned APP for the State.

3. The prosecution is about an incident dated 17.10.2019. It has taken place at about 8:40 p.m.. There was some petty quarrel between the deceased Rahul Shivudkar and the present Applicant, his brother and his nephew. At the time of incident, it is alleged that, the Applicant's nephew Avinash Nerlekar gave a blow with knife on Rahul's neck and other co-accused Chandrakant Nerlekar, who was brother of the Applicant gave a blow on the left rib causing serious injuries. The allegations against the Applicant are that he kicked and then assaulted the deceased.

Submissions :

4. Shri Hilage submitted that the first informant Amol Shivudkar, who was brother of the deceased has not attributed any role to the present Applicant though the eye witnesses have stated that after the deceased Rahul had fallen down on the ground, the Applicant kicked and assaulted him. He submitted that considering the statement of the first informant, the Applicant deserves to be released on bail.

5. He further submitted that in any case the eye witnesses statements also show that the Applicant has not used any weapon. There is no other circumstance in the nature of recovery of weapon at his instance.

6. Learned A.P.P., on the other hand, submitted that there are many eye witnesses who have consistently stated about the incident and all of them have stated that after the deceased had fallen down on the ground, the Applicant had kicked and assaulted him.

Reasons :

7. With the assistance of both learned Counsel, I have perused the charge-sheet annexed to this application. The postmortem notes show that the deceased had suffered two wounds – one was a stab injury of the size 3 cm X 2 cm reaching thoracic cavity deep to the extent of 5 cm. The other injury was 21 cm in length near neck. The injuries are quite big and serious.

8. The FIR lodged by Amol Shivudkar gives a

background of quarrel between the parties on some petty issue. As far as the incident is concerned, it is mentioned that all the three accused started quarreling with one Riyaz Mirajkar on the ground that he had burst crackers in front of their house. The quarrel continued. The deceased Rahul came at the spot and went to the Applicant and Riyaz Mirajkar. At that time, all the accused including the Applicant straightway went towards him and started beating him. At that point of time, the accused Avinash Nerlekar gave a blow on Rahul's neck. He fell down and then Chandrakant Nerlekar gave a blow with knife on his ribs. The others from the locality gathered there and then the accused went away. Rahul was removed to the hospital, where he was declared dead. Even in his statement, no role of assault with knife is attributed to the Applicant. The FIR does mention that all the accused were together and they straightway attacked Rahul. Other two accused gave blows with knife on the person of the deceased. This FIR also mentions that all the accused were together. Therefore, even as per the FIR, the Applicant was already

together with other accused who were carrying a knife. The knife was 11 cm in length and had a handle of 2 cm.

9. Then there are statements of eye witnesses i.e. Laxmi Shivudkar – mother of the deceased, Jyoti Shivudkar – informant's wife, Riyaz Mirajkar – who had taken part in the quarrel, Vinod Powar, Rahul Dawade, Umesh Karangale, Kiran Patil, Ganesh Kadolkar, Sumit Kothawale, Akshay Waghmare, Sohail Mirajkar and Santosh Bodage. All of them have consistently stated that after Rahul was assaulted with knife and after he had fallen down, all the accused including the present Applicant assaulted him with kicks. This clearly shows that the Applicant was sharing the common intention with other accused.

10. Considering seriousness of the offence and the manner of assault, the Applicant does not deserve to be released on bail. Hence, the Application is rejected.

(SARANG V. KOTWAL, J.)