

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

CRIMINAL BAIL APPLICATION NO. 1517 OF 2020

Mahesh Baburao Nikam	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Pranav H. Bhoite, for the applicant.
Smt. A.A. Takalkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :30th MARCH, 2021

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 393 of 2020 registered at Satara Taluka Police Station, on 22/7/2020, under sections 302, 143, 147, 148, 149, 201 and 452 of the Indian Penal Code. The applicant was arrested on 24/09/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Pranav Bhoite, learned counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The prosecution case is that the deceased Sachin Pawar was harassing one Preeti Pawar and her mother. Preeti was accused No.1 Ranjit Sable's sister. On 21/07/2020, at about 8.00 p.m., the police who were on patrolling duty were informed that somebody was beating Preeti and therefore officers should go there to find out about the incident. When the police team reached there, they saw that one person was lying at the spot with severe injuries. His left leg was amputated below the knee and there were serious injuries on his head. He was uttering that Ranjit and Amit had assaulted him with axe. Police called for ambulance. But the doctor declared him dead at the spot. The prosecution case is that all the accused Nos. 1 to 7 had assaulted the deceased with axe. The applicant had given blows with sickle on head of the deceased.

4. The FIR was lodged by Police Constable Dhiraj Kumbhar. He had gone to the spot after receiving information. He had seen the deceased lying at the spot. Within a short time he died. He was saying that he was assaulted by Ranjit and Amit with axe.

5. Learned Counsel for the applicant submitted that in the FIR itself it is mentioned that the deceased had named Ranjit and Amit. There is no mention of the present applicant. He submitted that initially statements of many witnesses were recorded but none of them had given description of the incident and none of them had given name of the present applicant. Those statements were recorded on 22/07/2020. After a few days, on 3/08/2020, District Superintendent of Police received an anonymous letter naming all the accused including the present applicant as assailants. After that, statements of some eye witnesses were recorded again. On this occasion, some of the witnesses have named the present applicant and have described his role. He therefore submitted that the police are creating false evidence against the present applicant only on the basis of an anonymous letter. He submitted that the dying declaration of the deceased shows that the applicant was not an assailant. There is no recovery at the instance of the present applicant and there is no other incriminating circumstance against him.

6. Learned APP opposed this application. She submitted

that though the statements of eye witnesses were recorded in July 2020 and though they had not named the applicant; in August 2020, their statements were recorded. They had named the applicant. In the statements recorded under section 164 of Cr.P.C., they have stuck to their story that the applicant was one of the assailants. She submitted that the offence is serious and no leniency should be shown to the applicant.

7. I have considered these submissions. With the assistance of both learned Counsel I have perused the entire charge-sheet.

8. Post mortem notes show that the deceased had suffered 11 injuries. They were on head, thigh, legs and feet. The cause of death was mentioned as “death due to severe head injury with multiple both lower limb injury”. The deceased was brutally assaulted.

9. While it is true, that, at the first instance the police could not get any witness and nobody had given the description of

the actual incident. However, in the month of August 2020, some witnesses had come forward and had given narration of the incident. Their statements are important. They are Shashikant Sabale, Prasad Sable, Vikrant Sabale, Dilip Sable. When their statements were recorded on 22/07/2020, they had not described the incident. But on 26/08/2020, they have given detailed description of the incident. They have attributed a specific role and a weapon to the present applicant. They have stated that all the accused assaulted the deceased with their respective sharp weapons. Except present applicant, rest of the assailants were having axe and the applicant was having sickle. They have mentioned that when one Vikrant tried to intervene, all the accused persons aggressively came towards him. These witnesses have explained that, on the earlier occasion they did not narrate about the incident because they were scared. Thus it can be seen that there are at least 4 to 5 eye witnesses and they have explained why they have not described the incident on the earlier occasion. The manner of assault was brutal. Left leg of the deceased was amputated and there were many blows given to him. One of the person who tried to intervene was threatened. Therefore, belated

recording of their statements will not help the applicant at this stage.

10. As far as dying declaration is concerned, statement of Nitin Sable shows that when the police came there, the deceased was already in a delicate state. He died in very short span of time and therefore, he had named main two accused. He was not in a position to describe the incident in detail. Therefore, this aspect also does not help the present applicant. Hence, no case for bail is made out.

11. The application is rejected.

(SARANG V. KOTWAL, J.)