

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

CRIMINAL BAIL APPLICATION NO. 100 OF 2020

Dattatray Murlidhar Khutwad

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Aniket Nikam i/b. Vivek N. Arote for Applicant.

Mr. S. S. Pednekar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2021

(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 249 of 2017 registered at Trombay police station, Mumbai, on 08/09/2017 under sections 302, 323, 504 and 506 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 10/09/2017 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Aniket Nikam, learned counsel for the

applicant and Shri. Swapnil Pednekar, learned APP for the State.

3. The case of the prosecution is that, in the night between 07/09/2017 and 08/09/2017 because of some previous quarrel the deceased Badal was assaulted by all the accused with paver blocks and committed his murder.

4. The First Information Report (for short 'F.I.R.') is lodged by Akash Ubale on 08/09/2017. He was brother of the deceased Badal. He has stated that, on 08/09/2017, at about 3:45p.m. one Swapnil Sonawane came to his house and told him that his brother was assaulted near railway line and he was lying there. The informant went there. Badal was lying in injured condition with bleeding injury on his head and face. He was taken to hospital, but he was declared dead before admission. The informant made inquiries with others and lodged this F.I.R. In the F.I.R., he has named Vaibhav Chavan as an eye witness. He had told the informant that the deceased was assaulted by Akshay Patil, Ajay Suryavanshi and one unknown person.

5. In the informant's supplementary statement, he improved his version and added that, according to Vaibhav there

was no unknown person but it was the applicant who had taken part in the assault.

6. Learned counsel for the applicant submitted that, there is only one eye witness to the incident i.e. Vaibhav and his statement shows that the offence may not be that of murder as defined under section 300 of the IPC. The incident had occurred because of grave, sudden and persistent provocation given by the deceased and, therefore, it may fall within either Exception I or Exception IV to section 300 of IPC. He submitted that, there is a statement of one Swapnil Kadam who has referred to the extra judicial confession given by the applicant telephonically. He submitted that, taking the prosecution case as it is, no offence punishable under section 302 of IPC is made out. The applicant is in custody since 10/09/2017, therefore, applicant's further custody is not warranted.

7. Learned APP opposed this application. He submitted that, the bail application of Akshay Patil was allowed to be withdrawn by this court (Coram: A. S. Gadkari, J.) vide order dated 04/07/2018. He submitted that, statement of eye witness is

sufficiently incriminating against the present applicant. He submitted that, when the applicant was arrested, his pant showed blood stains. He opposed this application.

8. I have considered these submissions. With the assistance of both learned counsel I have perused the charge-sheet. A copy of the charge-sheet annexed to this application does not contain postmortem notes. However, investigation papers were produced before me by learned APP which contain postmortem notes. The postmortem notes show that, there were 25 injuries. Most of them were in the nature of contused abrasions indicative of free fight between the deceased and the accused. However, there were about 11 injuries on face and head. The cause of death was mentioned as “Shock due to multiple injuries over head, face and lower body parts in alleged case of physical assault (unnatural)”. So, there is no doubt that the deceased had died because of assault mounted by the accused.

9. However, the question remains as to whether the offence would fall within the meaning of ‘murder’ as defined under section 300 of IPC. In that context, the statement of Vaibhav is

most important. This is the only statement which is worth consideration because he is the sole eye witness to the incident. He has stated that, he was a rickshaw driver and he used to ply rickshaw in the night shift. He had parked his rickshaw at about 11:00p.m. on 07/09/2017 near Saibaba rickshaw stand at Mankhurd. Badal met him with his two friends including one Ajay Suryavanshi. This witness Vaibhav, Badal, Ajay and one more friend went together to consume liquor in a hotel. At about midnight, Atul Gole, present applicant and Swapnil Kadam came there. At that time, Badal congratulated Atul Gole for some reason. Suddenly, there was a quarrel between Badal and Atul. At that time, this witness Vaibhav and Swapnil tried to calm them down. The hotel owner also asked them to maintain peace, but neither of them was listening. During the quarrel Badal gave 2-3 slaps to Atul. This witness Vaibhav has categorically stated that, the present applicant tried to mediate between Badal and Atul. At that time, Badal abused Ajay and beat him, as well. The hotel owner drove all of them out. As Atul started going away, Badal chased him. It was at around 1:00a.m. on 08/09/2017. Thereafter this witness

went back to his rickshaw at the rickshaw stand. After 15 to 20 minutes, Badal came near him. Both of them started walking towards the railway line. They saw the applicant and Ajay sitting in that area. Badal and this witness Vaibhav went near them. Badal inquired with the applicant and Ajay regarding Atul Gole's whereabouts. The applicant told him that, he was not aware about that. Thereafter, Badal went away and this witness again came back to his rickshaw stand. After some time, Badal again went near the applicant and Ajay and made inquiry about Atul. At that time, Badal slapped Ajay 2-3 times. Ajay started running towards the railway line. He was chased by Badal. The present applicant and this witness Vaibhav followed both of them. One Akshay Patil was sitting near the railway line. There was some talk between the applicant, Ajay Suryavanshi and Akshay Patil. Badal was abusing and beating Akshay Patil, Ajay Suryavanshi and the applicant. This witness and Swapnil Kadam tried to stop them, but Badal was not listening to anybody. At about 2:30a.m. again there was another quarrel between Badal on one side and Akshay Patil, Ajay Suryavanshi and the applicant on the other. Again Badal started

beating Akshay, Ajay and the applicant. Finally, all three of them lost their patience. As Badal was chasing Akshay Patil, the applicant and Ajay followed them. A fight ensued between them. This witness saw that, Akshay Patil banged Badal's head on the road. He was assisted by the applicant and Ajay. They gave blows with paver blocks on Badal's head. Thereafter they went towards Mankhurd railway station. In this incident, the deceased had suffered fatal injuries.

10. If this statement is read carefully, it is more than clear that, it was the deceased who was repeatedly approaching the applicant and others and was unnecessarily picking up quarrel, abusing them and beating them. On most of these occasions, the applicant and others had shown patience and had not reacted by assaulting the deceased. At the first instance, the applicant had even tried to mediate in the original fight between Atul and deceased. This shows that, there was no premeditation, there was no preparation and there was no weapon carried by the applicant and others. The incident, definitely had started because of repeated provocation given by the deceased himself. In this view

of the matter, there is considerable force in the submission of learned counsel for the applicant that the offence may not fall within the definition of 'murder', but may fall within either Exception I or IV to section 300 of IPC. In this view of the matter, considering the fact that the applicant is in custody since 10/09/2017, I am inclined to grant bail to the present applicant.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 249 of 2017 registered at Trombay police station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)