

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

CRIMINAL BAIL APPLICATION NO. 284 OF 2020

Prashant Ramesh Ombale Applicant

Versus

The State of Maharashtra Respondent

Mr. Aniket Nikam i/b. Vivek N. Arote for Applicant.
Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.183 of 2018 registered with Kothrud police station, Pune, under section 302 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 10/07/2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. The prosecution case is about commission of murder of one Akshay Jori. The allegations are that the applicant's brother

Sushant had some dispute with the deceased Akshay over love affair with a girl. The matter escalated in the night of the incident and Akshay was assaulted by the applicant's brother Sushant with a broken beer bottle on his throat and thereby committed his murder.

3. Heard Shri. Aniket Nikam, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

4. The First Information Report (for short 'F.I.R.') is lodged by one Balu Jori. He is father of the deceased Akshay. He has referred to the dispute between deceased and the applicant's brother Sushant in respect of love affair with a girl. On 09/07/2018, at about 8:30p.m. the deceased Akshay had left in a car with applicant's brother Sushant, one Sushant Ambekar, Ashish Pokale and Sanket Shinde. Akshay had told the informant that the dispute with Sushant was resolved and they were friends again. In the early morning at 4:30a.m. on 10/07/2018 the informant was called telephonically by his brother in law and was informed that Akshay had suffered injuries and that he was admitted to Sahyadri Hospital, Pune. The informant went there. He saw that Akshay had

suffered serious injury on his throat. Akshay succumbed to his injuries and thereafter this F.I.R. was lodged.

5. Shri. Nikam submitted that, there are three alleged eye witnesses mentioned in the charge-sheet. Their statements are recorded under section 161 of Cr.p.c., as well as, under section 164 of the Cr.p.c. Out of them, eye witness Ashish Pokale has not attributed any role of assault to the present applicant in his statement under section 164 of Cr.p.c. Thus, there is sufficient doubt created about applicant's participation in the offence. He submitted that, in any case, the applicant had accompanied his brother to the flat where the incident had taken place, but they had not carried any weapon. Therefore, it cannot be said that the applicant had shared any common intention with his brother in commission of murder. Shri. Nikam relied on a report given by PSI Waghmare to Sr. P. I. Kothrud police station which is part of the charge-sheet. It is mentioned in the report that, Dr. Shweta Ransingh attached to Sahyadri Hospital had informed that, she, in turn was informed by Sanket Shinde, Ashish Pokale and the present applicant about the injuries suffered by the deceased

Akshay and they had brought Akshay to the hospital. He, therefore, submitted that, this report indicates that the applicant had not shared any common intention with his brother in assaulting the deceased.

6. Learned APP opposed this application and she relied heavily on the statements of eye witnesses.

7. I have considered their submissions. The postmortem notes show that the deceased had suffered six injuries and the cause of death was mentioned due to 'Hemorrhagic shock due to injuries sustained'.

8. The important feature of this case is obviously statements of three eye witnesses. They are Ashish Pokale, Sanket Shinde and Sushant Ombale. Their statements under section 161 of Cr.p.c. are consistent and identical. They have narrated about the circumstances leading to the actual incident of assault on the deceased. They have stated that, initially all of them including the applicant's brother Sushant had gone to the concerned flat. They had consumed liquor and had planned to eat food which was ordered. At that time, there was quarrel between the deceased and

Sushant. The quarrel escalated. Sushant lost his control. He was pacified by the witness Ashish Pokale. Sushant was taken to his house. After some time, Ashish Pokale received a phone call from Sushant's and applicant's mother. She told them that the applicant and his brother Sushant were coming to the flat. At about 4:00a.m. the applicant and Sushant reached that flat. They were accompanied by their friend Sagar Mistry. Sushant was still very angry. They entered the flat. There are clear averments in their statements that, even the applicant and Sagar forced their entry in the flat. Immediately thereafter Sushant broke two beer bottles and gave a below on Akshay's throat causing bleeding injury. At that time, the applicant and Sagar assaulted Akshay with kicks and fist blows. After this assault, Sushant, present applicant and Sagar left the flat. While going, Sushant carried broken beer bottle with him. These statements were recorded on 10/07/2018. Thereafter their statements under section 164 of Cr.p.c. were recorded on 26/07/2018. In these statements, Sushant and Sanket have stuck to their stories in their statements recorded under section 161 of Cr.p.c. They have attributed role to the applicant of giving kick

blows after the deceased was assaulted by Sushant with broken beer bottle. Only Ashish has not given this particular role to the applicant in his statement recorded under section 164 of Cr.p.c.

9. These statements of eye witnesses speak for themselves. At this stage, there is no reason to doubt their versions just because Ashish has not mentioned the applicant's role in his statement recorded under section 164 of Cr.p.c. It does not wipe out effect of all other statements of the eye witnesses including Ashish's statement recorded under section 161 of Cr.p.c.

10. The report referred to by Shri. Nikam does not have much evidentiary value. That aspect will have to be decided during trial. At this stage, there is sufficient material against the present applicant. Therefore, considering the gravity of offence, bail cannot be granted to the applicant.

11. The application is rejected.

(SARANG V. KOTWAL, J.)