

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 493 OF 2020

Harshad Anant Bhalekar,
Age 24 years, Occupation – Agriculture,
Residing at Pasygaon, Post-Paye,
Taluka-Bhiwandi,
District – Thane,
(Presently lodged in Kalyan District
Prison, C1-1, Kalyan)

.. Applicant
(Org. Accused No.3)

Versus

The State of Maharashtra
(At the instance of Inspector of Police,
Bhiwandi Taluka Police Station,
Thane)

.. Respondent

WITH
INTERIM APPLICATION NO. 1128 OF 2020
(For Intervention)
IN
BAIL APPLICATION NO. 493 OF 2020

Smt. Sarita Raju Bhalekar,
Age 33 yrs., Occ: Housewife,
R/o. Paygaon, Post Paye,
Taluka Bhiwandi, Dist. Thane.

.. Applicant/
Intervener
(First Informant)

In the matter between :

Harshad Anant Bhalekar,
Age 24 years, Occupation – Agriculture,
Residing at Pasygaon, Post-Paye,
Taluka-Bhiwandi,
District – Thane,
(Presently lodged in Kalyan District
Prison, C1-1, Kalyan)

.. Applicant
(Org. Accused No.3)

Versus

The State of Maharashtra
(At the instance of Inspector of Police,
Bhiwandi Taluka Police Station,

SHRADDHA
KAMLESH
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Thane)

Vide C.R.No.I-166/2018

For offences u/S. 302, 452,

323, 504, 506 read with

section 34 of IPC)

.. Respondent

Mr. Niranjan Mundargi i/b Mr. Shambhu M. Jha for applicant in BA/493/2020.

Mr. Sanjay Kulkarni i/b Ms. Sangeeta E. Phad for intervener in IA/1128/2020.

Mrs. Aamika Malhotra, APP for State.

CORAM : N.J. JAMADAR, J.

Date : 31st July 2021.

(THROUGH VIDEO CONFERENCE)

ORDER :

1. This application is preferred to enlarge on bail the applicant, who is arraigned for the offences punishable under section 302, 452, 323, 504 and 506 read with section 34 of the Indian Penal Code, 1860 ('the Penal Code') for having, *inter-alia*, committed murder of Raju Prabhakar Bhalekar ('the deceased'), the husband of Smt. Sarita-the first informant, in furtherance of the common intention with the co-accused.

2. The gravamen of indictment against the applicant is that on 8th June 2018, at about 9:30 p.m, when a quarrel broke out between his father Anant (accused No.1) and Raju, the deceased,

who resided in the adjacent house, the applicant and his brother Bevesh @ Bunty Bhalekar (accused No.2) barged into the house of the first informant. The accused No.2-Bevesh @ Bunty was armed with a wooden log. The applicant was armed with a knife. The applicant gave a blow by means of knife on the stomach of the deceased. The latter sustained a grievous injury and succumbed on the night intervening 8th and 9th June 2018.

3. I have heard Mr. Niranjan Mundargi, the learned counsel for the applicant in Bail Application No. 493 of 2020, Ms. Malhotra, the learned APP for the State and Mr. Sanjay Kulkarni, the learned counsel for the first informant-applicant in Intervention Application No.1128 of 2020.

4. Mr.Mundargi, the learned counsel for the applicant strenuously urged that even if the prosecution case is taken at par, the offence punishable under section 302 of the Penal Code cannot be said to have been *prima-facie* made out. To draw home this point, Mr. Mundargi took the Court through the first information report, dated 9th June 2018, the supplementary statement of the first informant recorded on 10th June 2018 and the statement of the witnesses, including the children of the deceased, recorded on 10th June 2018. An endeavour was made to

demonstrate that in the supplementary statement of the first informant and the statements of other witnesses recorded on 10th June 2018, a conscious effort was made to attribute premeditation to the accused-applicant, which was conspicuous by its absence in the first information report. According to Mr. Mundargi, the first information report indicates that the applicant had inflicted a single blow on account of a sudden provocation caused by the assault mounted upon his father Anant (accused No.1) by the deceased. Attention of the Court was also invited to the post-mortem report, which shows that there was only one external injury, namely, the incised wound over the left side of abdomen. As the applicant, a young boy, has been in custody since 10th June 2018, he can be released on bail by imposing appropriate conditions, submitted Mr. Mundargi.

5. The learned APP and the learned counsel for the first informant stoutly opposed the prayer of the applicant.

6. From the perusal of the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it, it becomes abundantly clear that there is no qualm over the core of the occurrence and the identity of the assailants. Nor the homicidal nature of the death is, *prima-facie*, in issue. There

is material in the form of the statements of the witnesses and the recovery of the alleged weapon of assault, pursuant to the discovery allegedly made by the applicant, to connect the applicant with the crime, *prima-facie*. The endeavour of Mr. Mundargi was to drag home the point that the prosecution case, as it stands, would not bring the act of the applicant within the tentacles of section 302 of the Penal Code.

7. Indisputably, the post-mortem report records that there was sole external injury, i.e., incised wound at the left abdomen. However, it is not the law that in a case of single blow the offence would not fall within the dragnet of section 302 of the Penal Code. The attendant circumstances, including the nature of the weapon, the part of the body selected, the force with which the blow is inflicted, the position of the victim and the situation at the spot play a significant role.

8. In the case at hand, at this stage, there is no material to indicate that there was a scuffle in which the accused No.1 entertained a reasonable apprehension of death or grievous hurt at the hands of the deceased. Nor is there material to, *prima-facie*, make out a case of grave and sudden provocation. The applicant allegedly entered into the house of the deceased, as an

altercation ensued between the deceased and accused No.1. It would be contextually relevant to note that the alleged weapon of assault has 20 cm long and 2 cm wide blade. The post-mortem report indicates that the deceased had suffered a 5 cm cavity deep incised wound and the intestines were protruding. These twin factors underscore the force with which the blow was inflicted.

9. To sum up, having regard to the nature of the weapon, the part of the body selected and the force with which the blow was unleashed, in my considered view, it would be rather difficult to accede to the submission on behalf of the applicant that, in view of the single blow, the act would not fall within the ambit of section 302 of the Penal code.

10. There is another factor which bears upon the prayer to enlarge on bail. Allegedly, the deceased was done to death in the presence of his son and daughter, who were shown to be 7 and 10 years of age, at the time of occurrence. Their presence at the place and time of occurrence was but natural. Their statements recorded in question-answer form, lend support to the prosecution version. Indisputably, a party wall separates the houses of the accused and the deceased. In this backdrop, the apprehension on the part of the prosecution cannot be said to be

unfounded, especially considering the tender age of the aforesaid witnesses.

11. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the applicant.

12. Hence, the following order :

O R D E R

- (i) The Bail Application stands rejected.
- (ii) In view of disposal of Bail Application, Interim Application No. 1128 of 2020 also stands disposed of.

(N. J. JAMADAR, J.)