

dik

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

BAIL APPLICATION NO. 547 OF 2020

Rohit Ashok Shinde ... Applicant
Vs
The State of Maharashtra ... Respondent

Mr. Jay S. Patil i/b R.D.Suryawanshi for the Applicant
Smt. S.V.Sonawane, APP for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : 4th SEPTEMBER, 2021

P.C. :

This application is preferred to enlarge the applicant on bail. The Applicant has been arraigned for the offences punishable under Sections 120-B, 302, 147, 148 and 149 of Indian Penal Code, 1860 (for short "Penal Code") and Section 37(1)(3) read with 135 of the Maharashtra Police Act, 1951.

2. The prosecution case runs as under;

3 First informant Sitaram Chourasia is the father of Babalu Chourasia (the deceased). Four months prior to the occurrence, on incident had taken place behind Shriram Talkies wherein one Afridi Shaha was killed and Nikhil Chourasia was injured. Offences were registered against the First Informant's son Raju and deceased Babalu at Kolsewadi police station, in connection with the said

incident. Nikhil Chourasia and his associates had a grudge against the deceased and were on the lookout for the deceased. On 1st March, 2018, the First Informant was apprised by a 15 year old boy that the deceased was brutally assaulted near Tanker Point Pandit Mhatre Compound, Akash Colony. He found deceased in a critically injured condition. Deceased was taken to the hospital, but declared dead. Thus First Informant lodged the report alleging that Nikhil and his associates had killed the deceased.

4 During the course of investigation the statements of the witnesses were recorded including Preetam Sonpari a 17 year old boy and Nilesh Tamhankar, another 15 year old boy. These witnesses named the applicant Rohit Shinde as the person who had caught hold of the deceased along with Jayant Mhatre near Beer Shoppee. These witnesses further stated that the rest of the assailants came there at on motorcycles and all the accused forcibly carried the deceased towards the tanker point and the deceased was stabbed. The applicant came to be arrested.

5 The learned Sessions Judge was persuaded to reject the application preferred by the applicant opining *inter alia* that the applicant has been specifically named as the member of the unlawful assembly in prosecution of the common object of which the deceased

was killed, by two witnesses who are very young. Thus the possibility of tampering with the evidence and threatening the witnesses, in such circumstances, cannot be ruled out.

6 I have heard Mr. Jay Patil, the learned counsel for the applicant and Ms. Sonawane, the learned APP for the state. I have perused the material on record including the statements of above-named witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.").

7 Mr. Jay Patil, the learned counsel for the applicant submitted that initially the applicant was not named in the F.I.R. Even in the statements of Preetam Sonpari and Nilesh Tamhankar, the role of actual assault has not been attributed to the applicant. At best, the applicant had allegedly caught hold of the deceased in front of Beer Shoppee. Since six injuries found on the person of the deceased are attributable to the blows inflicted by co-accused Bob and Altaf, the applicant cannot be said to have been animated by the common object of the alleged unlawful assembly. An endeavour was made to demonstrate that the statements of the abovenamed witnesses do not deserve implicit reliance as the opportunity for those witnesses to clearly witness the occurrence is in the corridor of uncertainty as they claimed that there was darkness and thus

could not see the entire incident.

8 In opposition to this, Ms. Sonawane, the learned APP for the state stoutly submitted that the witnesses have specifically named the applicant as the person who had caught hold of the deceased. Though the actual assailants came there at later on, yet there is material to indicate that the applicant was the part of the unlawful assembly which carried the deceased forcibly near the Tanker Point and assaulted him. In view of the serious nature of the offences and the fact that the prosecution case rests on the testimony of two very young witnesses release of the accused on bail would jeopardize the interest of the prosecution as there is strong possibility of tampering with the evidence and threatening the prosecution witnesses, urged the learned APP.

9 Undoubtedly the applicant was not named in the FIR. However, it is trite that non-inclusion of the names of all the accused in the FIR is not by itself fatal to the prosecution. In the case in hand, two witnesses, namely, Preetam Sonpari and Nilesh Tamhankar have claimed that they had known the applicant from before. Both the witnesses have consistently stated that the applicant and Jayesh Bhambare had caught hold of the deceased in front of a Beer Shoppee. Nilesh Tamhankar further informed that

co-accused Jayesh Bhambare had asked him to keep a vigil on the deceased. There is material to indicate that after the applicant and the co-accused Jayesh Bhambare apprehended the deceased, the rest of the members of assailant party came thereat. Eventually the deceased was stabbed to death. In the totality of the circumstances, at this juncture, it would be rather hazardous to draw an inference that there was no common object to commit the murder of the deceased or that the applicant did not know that in prosecution of the common object of unlawful assembly the death of the deceased was the likely consequences.

10 Mr. Patil, the learned counsel for the applicant attempted to salvage the position by putting forth a submission that the applicant was not the assailant. The submission, however, loses sight of the fact that the applicant was allegedly the person who initially apprehended the deceased. In the face of the material which *prima facie* shows that the applicant was a member of the unlawful assembly in prosecution of the common object of which the offences were committed, the fact that the actual assault was not mounted by the applicant loses significance. Mr. Patil further submitted that one of the witness has not named the applicant as the assailant in the statement recorded under Section 164 of Cr.P.C. It

appears, Mr. Nilesh Tamhankar has not named the applicant as one of the persons who actually assaulted the deceased. However, Mr. Preetam Sonpari has specifically named the applicant as one of the assailants.

11 In the backdrop of the aforesaid material, it cannot said that a *prima facie* case is not made out against the applicant. Having regard to the gravity of the offences and the attendant circumstances, the apprehension on the part of the prosecution that there is a strong possibility of tampering with the prosecution evidence and threatening the witnesses, especially, Preetam Sonpari and Nilesh Tamhankar, appears to be well founded.

12 For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the applicant. Hence, the following order.

ORDER

1. The application stands rejected.
2. The learned Sessions Judge is requested to make an endeavour to decide Sessions Case No.272 of 2018 as expeditiously as possible.

(*N. J. JAMADAR, J.*)