

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

CRIMINAL BAIL APPLICATION NO. 917 OF 2021

Sonay @ Mahesh Shivaji Misal Applicant

Versus

The State of Maharashtra Respondent

Dr. Abhinav Chandrachud i/b. R. V. Gupta for Applicant.
Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 575 of 2019 registered at Kondhwa police station, under section 302 r/w. 34 of the Indian Penal Code (for short 'IPC'), under sections 4 and 25 of Indian Arms Act and under section 37(1)(3), 135 of Maharashtra Police Act. The applicant was arrested on 27/06/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Dr. Abhinav Chandrachud, learned counsel for

the applicant and Shri. Yadav, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Aakash Malhotra. He has stated that on 25/06/2019 he himself along with Shahrukh Khan, Saifan Dandwate, Aasif Sayyad and Govind Hake were sitting near Parsi maidan. At that time, the applicant and his two to three associates came there. The applicant was wielding a sharp weapon and his associates were having stones with them. The informant and others started running away from there. The applicant and his associates caught hold of Shahrukh. The applicant told him that since he was not returning his money he was angry. The F.I.R. mentions that the applicant gave a blow with his sharp weapon on forehead of Shahrukh. He was also assaulted with cement brick and cement block. After that they left the place. The informant and others went near Shahrukh. His head and face were full of blood. There was heavy bleeding and there was no movement. The police were informed. Shahrukh was taken to Sassoon Hospital. There he was declared dead. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the

version given by the eye witnesses including the informant does not match with the injuries mentioned in the postmortem notes. He submitted that, eye witnesses have narrated that the applicant had given blows with sharp weapon on head of the deceased. However, there were no injuries which could be caused by sharp weapon. He submitted that, it is well settled that, if the injuries are in the nature of contusion and abrasion, it means that they were not caused by any sharp weapon. Therefore, he submitted that on the face of it, version given by the eye witnesses is completely false. He further submitted that, prosecution case is that, when the applicant was arrested, he was wearing same clothes which he was wearing at the time of incident and there were no blood stains on his clothes. This shows that he could not have committed assault causing bleeding injuries. He further submitted that, C.A. report is still awaited and, therefore, there was no corroboration to the allegations. Finger prints were not taken to establish use of murder weapon by the applicant. He further submitted that, when the recovery was effected, there was no entry in the logbook in respect of car which was taken for recovery of this weapon.

5. Learned APP opposed this application on the ground that the statements of eye witnesses have sufficiently described the role of the applicant. Therefore, the applicant does not deserve his release on bail.

6. I have considered these submissions and with the assistance of both learned counsel I have perused the entire charge-sheet. Apart from the first informant, there are other eye witnesses namely Saifan Dandwate, Aasif Sayyad and Govind Hake. All of them have stated that the applicant had given blows with his sharp weapon on Shahrukh's head and others had assaulted Shahrukh with stones and cement bricks. The postmortem notes show that the deceased had suffered as many as 29 injuries. They were in the nature of lacerated wounds, contused abrasion, incised wounds, midline contusion etc. In short, the deceased was brutally assaulted. The lacerated wounds were mentioned with dimensions showing depth as bone deep, muscle deep etc. Injury No.12 on the face shows that it was an incised wound. The nature of injuries show that deceased was assaulted by sharp weapons, as well as, by blunt weapons. There is direct

evidence against the present applicant in the nature of statements of eye witnesses, as mentioned earlier. The statements are consistent. Therefore, all the other circumstances which at the highest can form corroborative piece of evidence will pale in comparison. Considering this aspect and seriousness of offence, as well as, direct evidence against the present applicant, no case for bail is made out.

7. Application is rejected.

(SARANG V. KOTWAL, J.)