

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.764 OF 2020

Narendra Narayan Advilkar

.... Applicant.

Vs.

State of Maharashtra

.... Respondent.

Mr. Pravin Desai for the Applicant.

Mr. A. R. Patil, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 17th FEBRUARY, 2021.

P.C.:-

1. This is a successive Application for bail. The earlier Application for bail bearing No.3203 of 2018 preferred by the applicant was dismissed as withdrawn by this Court, with liberty to file an Application for bail before the Trial Court, if the trial Court arising out of C.R. No.I-144 OF 2018 registered with Kolsewadi Police Station, Kalyan (East), does not commence within the period of nine months from the date of passing of the said Order.

2. Learned counsel for the applicant submitted that, as per his instructions, till date, the Trial Court has not framed charge and therefore the present applicant is entitled to be released on bail. According to this Court, except passage of time there is no change in circumstance for

granting bail to the applicant.

However, at the persistent insistence of the learned Advocate for the applicant, I have heard the Application afresh.

3. The First Information Report is lodged by Smt. Sakshi Sandesh Ghadshi, i.e. wife of deceased Sandesh Ghadshi. It is stated that, there was bickering between co-accused Vinay Tamhankar and deceased Sandesh Ghadshi over parking of autorickshaw by Vinay Tamhankar, just in front of the main gate of their chawl, which was causing obstruction to the inhabitants of the said chawl. On 18th March 2018, i.e. on the date of 'Gudipadwa', at about 8.25 p.m., co-accused Vinay Tamhankar again parked his autorikshaw in the middle of the road and in front of the main gate of the said chawl to which deceased Sandesh objected. At that time, co-accused Vinay Tamhankar abused deceased Sandesh in filthy language. Co-accused Vinay Tamhankar started assaulting deceased Sandesh with stick and fist blows. At that time, the applicant, who is brother-in-law of Vinay Tamhankar came there and also participated in assaulting the close relatives of deceased. It is categorically alleged that, the applicant pressed neck of deceased against the grill of house of Smt. Manisha Gosavi. He also gave fist blows on the chest of deceased Sandesh. Due to pressing of neck deceased Sandesh got unconscious and fell on the floor. Though, deceased Sandesh fell on the floor, it is alleged that, the applicant continued to press his neck with an intention that, Sandesh loses his soul. When the people

from the said chawl tried to pacify the said fight, it is alleged that, the applicant pushed them aside and thereafter ran away from the scene of offence. In the brief premise, the said F.I.R. is lodged.

4. Learned counsel for the applicant submitted that, in the first Medical Certificate issued by the Medical Officer attached to Rukminibai Hospital at Kalyan, there is no mention of any external or visible injuries over body and no throttling marks were found. However, in subsequent Medical Certificate, it is opined that, death caused by deceased was due to strangulation. He submitted that, the applicant is in jail since 19th March 2018. That, his wife and children are dependent on him. He submitted that, co-accused Vinay Tamhankar has been granted bail by the coordinate Bench of this Court by an Order dated 27th September 2018 in Bail Application No.2217 of 2018 and therefore, the applicant may be released on bail.

5. Perusal of First Information Report clearly mentions the role played by the applicant in the present crime, i.e. pressing of neck of deceased Sandesh till he become unconscious and fell on the floor. The applicant continued to press the neck of deceased Sandesh, even after he fell down on the ground and when the residents of the said chawl tried to push him away, he fled away from the scene of offence.

The statement of first informant has been duly corroborated by the son of deceased, namely, Sarvesh Sandesh Ghadshi, who was aged

about 10 years on the date of alleged incident. He has also categorically ascribed role of pressing of neck of his father by the applicant. The final cause of death certificate issued by the Department of Forensic Medicine, Grant Medical College, Mumbai mentions cause of death as 'Asphyxia due to strangulation with compression of chest (unnatural)'. It is thus prima facie clear that, the applicant is the main perpetrator behind the present crime. As far as release of co-accused Vinay Tamhankar on bail by this Court by its Order dated 27th September 2018 is concerned, the earlier Application preferred by the applicant bearing Criminal Bail Application No.3203 of 2018 was dismissed by this Court on 12th March 2019, i.e. after passing of an Order in favour of Vinay Tamhankar i.e. subsequent to the Order dated 27th September 2018 and after taking into consideration the same.

6. Mr. Patil, learned A.P.P. submitted that, the wife of deceased and his children are residing in the same chawl. That, the material witnesses are also residing therein. The eye witness, namely, Sarvesh Sandesh Ghadshi is aged about 12 years as of today and there is every possibility that, if the applicant is released on bail, he may threaten and/or pressurize the said material witness, who is minor.

7. After taking into consideration the gravity of the offence and the role played by the applicant, this Court is of the view that, the applicant can not be released on bail.

Application is accordingly rejected.

8. As the applicant is in jail since 19th March 2018, the learned Additional Sessions Judge-4, Kalyan, District Thane, seized of Sessions Case No.229 of 2018 is directed to expedite the trial of the said case and to make an endeavor to conclude the same within a period of one year from the date of receipt of the present Order.

9. All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)