

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1299 OF 2021

RAHUL SHIVAJI SHENDGE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Ranjit Pawar, Advocate for the Applicant.

Smt.P. P. Shinde, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 22nd NOVEMBER 2021
PRONOUNCED ON : 4th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.78 of 2020 registered with Police Station Daud, Pune, for offences punishable under Section 143, 147, 148, 149, 384, 387, 302 and 34 of the Indian Penal Code (IPC).

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2 It is the case of prosecution that on 17th February 2020, at about 11.00 a.m., accused Ganesh Maruti Shendge, Nitin Sunil Lavangare, Lala Balbhim Amner, Prakash Bharat Dalvi, Rahul Shendge (applicant), Amol Sunil Lavangare and two other persons had demanded from applicant extortion amount of Rs.2 lac for digging the sand within the limits of Taluka Daund, Pune. As the said amount was not given and when the informant, his cousin Nikhil Holam (deceased for short) and Ganesh Gopal Holam were digging the sand with the help of fibre boat from the bank of river Bhima, the accused formed an unlawful assembly and started beating the deceased. It is alleged that the applicant had given a blow of iron rod on the head of the deceased while accused Nitin Lavangare had beaten by means of bamboo stick. It is further alleged that, thereafter, they lifted the deceased and threw him in the river Bhima and went away by taking their fibre boat. The informant, accordingly, lodged the report.

3 Mr.Ranjit Pawar, learned counsel for the applicant, submits that all accused are released on bail by the learned trial

Court except the present applicant. According to the learned counsel, there is delay of three days in lodging the First Information Report (FIR) which has not been accounted for. Investigation is over and no purpose would be served by keeping the applicant behind the bars.

4 Smt. P. P. Shinde, learned APP, on the other hand, opposed the submissions by contending that the applicant is the main accused who had assaulted on the head of the deceased by means of an iron rod. There is eye witness, namely, Ganesh Gopal Holam, who had supported the prosecution case. Having regard to the nature of offence and there being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers including the postmortem report. From the postmortem report it is seen that the cause of death was due to acute cardio respiratory arrest due to asphyxia due to drowning along with head injury with internal cranial bleeding. From the findings of postmortem report it

appears there were two reasons – first being acute cardio respiratory arrest due to asphyxia due to drowning and, second, head injury with internal cranial bleeding.

6 There is statement of Ganesh Gopal Holam who has also stated in consonance with the FIR and has pointed out the role of the present applicant as the person who had assaulted the deceased on head by means of an iron rod.

7 What is pertinent to note here is that the informant was also very much present at the time of the incident which allegedly took place on 17th February 2020. It is only when the dead body of the deceased was found on 20th February 2020, that too, from the bank of river Bhima, the informant lodged the report. Why the informant waited for three days is nowhere explained. It is also pertinent to note the observations at paragraph 8 from the order of the learned trial Court dated 2nd September 2020 while releasing the co-accused Ganesh Maruti Shendge on bail, which are as under :

“8 The incident is dated 17/02/2020 and the FIR is lodged on 20/02/2020. No explanation has been given by the complainant that why there is delay in lodging FIR and that too of three days and that too the FIR was filed after the dead body of the said deceased was found. Also, the FIR shows the accused nos.1 to 6 ave thrown the deceased in river bed. But none of the eye witnesses statement confirms this fact. Also, in the investigation, it was revealed that the accused no.6 was not present at the spot. But his name is given in belated FIR. Thereafter police dropped his name and he was discharged vide Section 169 of Cr. P. C. So, prima facie chances of false and fabricated case due to such fact, cannot be ruled out and the cited case laws pertaining to delay in lodging FIR are applicable to the facts and circumstances of the case. For the sake of brevity, I have not reproduced the ratio therein.”

8 Thus, not only the trial Court had taken into consideration the delay aspect but the trial Court was also of the opinion that the chance of false and fabricated case cannot be ruled out. It is also to be noted that the said accused had also allegedly beaten the deceased by means of bamboo stick.

9 Thus, having regard to the material on record, including the delay aspect and as also in the light of the observations of the learned trial Court while releasing the said co-accused on bail, in my considered opinion, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Rahul Shivaji Shendge shall be released on bail in Crime No.78 of 2020 registered with Police Station Daud, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.

- (iii) The applicant shall not indulge in similar activities in future.
- (iv) The applicant shall attend the Court proceedings regularly.
- (v) Bail before the trial Court.
- (vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)