

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1520 OF 2021

Vishal Ramesh Bhadve .. Applicant
Versus
State of Maharashtra .. Respondent

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Mr.Abhay A. Anturkar i/b Mr.Vaibhav Kulkarni for the Applicant.

Mr.S.H.Yadav, APP for the State.

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CORAM: BHARATI DANGRE, J.
DATED : JULY 26, 2021

P.C:-

1. On being charge-sheeted for the offence of murder read with Section 34 of the Indian Penal Code in C.R.No.1268 of 2020 registered with Chandan Nagar Police Station, the applicant is seeking his release on bail. The release is sought on the ground that the applicant has been falsely implicated in the said C.R. and in fact in the FIR, he was not named initially and there is no justifiable basis on which he came to be implicated as one of the accused.

2. A complaint, resulting into registration of FIR, came to be lodged by one Nilesh Ghadge, who stated that his brother by name Shailesh was into Real Estate Business and staying with him. He met his brother at 8.00 p.m. near the square and,

thereafter, his brother met his friends in front of World Trade Centre at around 12 o'clock. His friend informed the complainant that after having dinner and after consuming liquor, he had left the place on his motorcycle. The complainant states that in July 2016, his brother had a fight with accused No.1-Raju Aswale and his friends, namely, Sumit Wakade and Sumit Khedkar, resulting into registration of an FIR against Raju Aswale. In this background, Raju Aswale had abused his brother on phone. Resultantly, his brother went in search of Raju Aswale, but he was not traced.

3. In the morning of 05/10/2020 at about 7 o'clock, the friend of the complainant visited his house and escorted him to Naivedyam Hotel behind World Trade Centre, Kharadi, Pune where his brother Shailesh was lying in a pool of blood with several injuries on his person. A cement block and a wooden stick alongwith a blood stained uneven stone were found lying next to his body. He identified the body to be of his brother and lodged the FIR alleging that his brother was eliminated by Raju Aswale and Sunil Patil, who were named as accused Nos.1 and 2. The FIR also implicate some unknown persons. In the supplementary statement dated 12/10/2020, the complainant has taken the name of the applicant alongwith another accused, namely, Akash Devkar, who also came to be arrested in connection with murder of his brother.

4. During the course of investigation, the statements of several witnesses were recorded, which are compiled in the charge-sheet. These include, the statement of one Swapnil

Jaywant Gaikwad, who is in the business of plotting and was acquainted to deceased, Raju Aswale, Sunil Patil, Vishal Bhadve (applicant) and Ajinkya Matale. In his statement, he has referred to the incident, which had occurred in the year 2016 when the deceased Shailesh was assaulted by Raju Aswale, Sumit Khedkar and Sumit Wakade and who came to be arrested on a complaint being lodged. He speaks of the incident dated 04/10/2020 when at around 12.15 a.m., he was accompanied by his friends near Bapu Dhaba. On a call given by Ajinkya Matale, he stopped his car. He state that when he was enroute for dropping Ajinkya through Gera Society and when he reached to Naivedyam Hotel, he noticed his acquaintance Shailesh in the company of Raju Aswale, Vishal (applicant), Sunil Patil and Akash Devkar and some brawl had ensued between them. He stopped the car and noticed that Raju was carrying big stone whereas applicant was holding a paver block in his hand, Sunil Patil was holding a wooden stick and Akash Devkar was speaking in loud abusive language. He expressed that they should intervene, but his friend restrained him from doing so on the ground that it was normal for the said group to bicker and, therefore, he left the spot. On the next day, he received the news about Shailesh being murdered. He reached to Naivedyam Hotel where he found the deceased lying down with his head battered and the cement block, stone and wooden stick smeared with blood lying on the spot.

On the similar lines is the statement of Ajinkya Mohan Matale, who was accompanying the earlier witness.

5. The postmortem report records 16 injuries in column No.17 with fracture of ramus of right and left mandible bone and fracture of both right and left maxillary processes. The cause of death is opined as "Head Injury". Looking to the nature of injuries, being 16 in number, they can be attributed to more than two accused persons. The head of the deceased was completely smashed, reflecting crush injury.

Undisputedly, the case is based on circumstantial evidence and the last seen theory has been put in place by the prosecution by citing the persons, who had seen the deceased in the company of the applicant in front of Naivedyam Hotel where the body was traced on the next day. The two witnesses have seen the applicant holding the paver block in his hand, which was found lying near the body of the deceased and came to be seized. Merely because the applicant was not named as an accused at the time when the FIR is lodged do not absolve him and the case of the prosecution as compiled in the charge-sheet, *prima facie*, points out the involvement of the applicant in the crime, based on the last seen theory and the circumstantial evidence collated in the charge-sheet.

6. The applicant is, therefore, not entitled for being released on bail, considering the gravity of the offence.

The application is rejected.

[SMT. BHARATI DANGRE, J .]