

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1567 OF 2021

Pruthviraj Shankar Nikam .. Applicant
Versus
The State of Maharashtra .. Respondent

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Ms.Tanvi G. Tapkire for the Applicant.

Mr.Y.M.Nakhava, APP for the State.

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CORAM: BHARATI DANGRE, J.

DATED : 13th JULY, 2021

P.C:-

1. The applicant is a young boy, aged 19 years, who has been charge-sheeted in C.R.No.66 of 2019 invoking Sections 302, 323, 504 read with Section 34 of the IPC. He came to be arrested in the said CR on 20/02/2019 and since then he is languishing in jail, awaiting the trial. It is informed that charge has not been yet framed.

2. The case of the prosecution is that the investigation commenced when the complainant, who is wife of the deceased, reported the police station on 18/02/2019 that her husband came back home at around 9 p.m., with one injury on his head from which he was bleeding. When inquired, he alleged to have stated that while he was passing from the house of one Vikas Bhosale, the applicant alongwith two other co-accused questioned him as to why he was roaming in the

night. When the deceased asked him not to meddle, they abused him and also assaulted him. The deceased told to his wife that it is the applicant, who had hit him with a stick on his head. On the morning of 19/2/2019, when the deceased did not respond and did not move, he was taken to the hospital, initially to one private hospital and thereafter he was admitted in the Miraj Civil Hospital where he breathed his last at 6.30 p.m. The postmortem report opine the cause of death to be on account of head injury and column No.17 of the postmortem report record contused lacerated wound over left parietal region measuring 10cm x 1cm bone deep.

3. On the basis of the allegation in the complaint, the applicant came to be arrested. The investigation led to discovery of one stick, which has been used as a weapon, which is attributed to all the three accused persons. The Medical Officer was confronted with the said weapon and he opined that the injury to the deceased could be caused by the said weapon, but he also clarify that he cannot say with certainty that the injury caused by said weapon would result into death.

4. Learned counsel for the applicant Ms.Tapkire, invited my attention to the document in the form of an ADR, which was registered on 19/02/2019 by Thane Ammaladar of Police Station Miraj, who reported about the deceased sustaining an injury and being admitted to a hospital. It is reported that he had a fall from the two wheeler due to which, the injury was sustained by him and he was admitted in the hospital by his

brother-Sanjay, who succumbed in the hospital on 19/02/2019 at 6.30 a.m. She also invited my attention to the medical papers of the private hospital where the deceased was taken for treatment at 6.00 a.m., which record the diagnosis as 'Alcoholic Intoxicant Injury' and history is narrated as consumption of alcohol coupled with fall. In light of the aforesaid two documents, the submission of the learned counsel is that the case of the prosecution becomes doubtful, since when the patient was admitted in the hospital, it was disclosed that he had a fall and sustained the injury.

5. There is no eye witness to the incident and the prosecution only rely upon the statement made by the deceased to his wife and mother in the night, when he sustained an injury and a specific role is attributed to the present applicant. The cause of death, undisputedly, is a head injury, but what caused the injury is the moot question. The Medical Officer, on being confronted with the weapon, does not opine with certainty that the injury caused by the said weapon would result into death. The prosecution will have to exert itself to establish that it was the injury mentioned in column No.17, which was caused by the weapon recovered from the accused persons and since the injury is attributed to the applicant, he is responsible for the death of the deceased. In any case, at this stage what can be seen is that there is a single injury to the deceased and by the opinion recorded in the postmortem notes, the death is caused due to the head injury. The applicant is a young boy aged 19 years and the charge-sheet does not reveal any positive material in form of

premeditation or intention attributed to the present applicant, but for such material, the applicant may be held responsible under Part II of Section 304 of the IPC.

In such circumstances, when the investigation is complete and the charge-sheet is filed, the applicant is entitled to be released on bail with an assurance that he would face the trial. Another reason for the release of the applicant is the delay, which is contemplated in conclusion of the trial, since after lapse of more than two years, the charge is yet to be framed and the long incarceration of the applicant, awaiting his trial would result injustice to him. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant – Pruthviraj Shankar Nikam shall be released on bail in C.R.No.66 of 2019 registered with Jath Police Station, Sangli on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not in any manner establish the contact with the family members of the members and shall stay outside the jurisdiction of Vitthal Nagar.
- (d) The applicant shall report to the Jath Police Station, Sangli on first Monday of every month between 10.00 a.m. and 2.00 p.m.

- (e) The applicant shall supply his contact number and address of his place of work to the Investigating Officer.
- (f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

6. The observations made hereinabove are, *prima facie*, in nature and limited to the extent of disposal of bail application.

SMT. BHARATI DANGRE, J