

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

CRIMINAL BAIL APPLICATION NO. 946 OF 2020

Bhimrao Nagurao Pandit	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Satyavrat Joshi i/b Rohit Shevate, for the applicant.
Smt. J.S. Lohokare, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 28th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 693 of 2018 registered at Chakan Police Station, Pune, under section 394 read with Section 34 of the Indian Penal Code. Subsequently sections 302 and Section 397 of the Indian Penal Code are added.

2. Heard Mr. Satyavrat Joshi , learned counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The FIR is lodged by one Satish Gadekar who was friend of the deceased Suyash Gund. He has stated that on 29/07/2018, at about 12.30 a.m. the deceased was walking towards the informant's room. The informant heard noise and saw commotion near his room. He went running towards the spot. When he reached there, he met Suyash who told him that while he was walking towards the informant's room, three persons stopped him. One of them tried to remove his wallet and other removed his mobile phone. When he resisted, one of them gave a blow with knife and then they ran away. Suyash was taken to hospital for treatment and then this FIR was lodged. The FIR mentions description of the mobile hand set which was taken away by the accused.

4. Injured Suyash Gund succumbed to his injuries on 5/08/2018 and therefore Section 302 of the Indian Penal Code was added.

5. Learned Counsel for the applicant submitted

that there is no identification parade held and there are no eye witnesses. Therefore there is no direct evidence against the present applicant. The only circumstance against the applicant is that recovery of mobile phone hand set and a knife. There is no connecting C.A. report that the same knife was used in the offence. The memorandum statement of the applicant does not mention the place where the knife and the mobile phone were kept. He submitted that the incident took place in the month of July and the recovery was effected in November. Therefore, there is no explanation as to what had happened to the mobile phone for those four months. He submitted that mobile phone is not identified by any of the witnesses.

6. Learned APP opposed this application. She submitted that recovery of mobile phone is clinching evidence against the present applicant.

7. I have considered these submissions. The post

mortem notes show that the deceased had suffered 7 injuries. Some of these injuries were post operational injuries in the nature of stitched wounds. However, cause of death was mentioned as “complications following stab injuries”. Therefore, it is beyond doubt that the deceased had lost his life for his mobile phone and some small amount. The offence obviously is cruel.

8. The only piece of evidence against the present applicant is recovery of mobile phone. However, in the context of the present case, this recovery is the most damaging piece of evidence against the present applicant mainly because the recovery panchnama shows IMEI numbers of that particular hand set. Those numbers are specifically mentioned in the recovery panchnama. The same numbers were mentioned in a receipt in the name of the deceased Suyash mentioning the address. In those receipts, same numbers are specifically mentioned. Thus it is clear that the recovered mobile hand set was of the deceased Suyash. It was recovered at the instance of

the present applicant. Learned Counsel for the applicant submits that the memorandum panchnama is not proper as the place of concealment is not mentioned in his statement. The panchnama shows that the applicant had led the police party to that particular place in Biradwadi Shivar. The applicant had led the police party to his house and he himself had produced those articles from a drawer of cupboard in that house. This fact establishes concealment of those articles, knowledge of the applicant of those places and his leading the police to that particular place for effecting recovery. Therefore, there is strong evidence against the present applicant. Looking to the nature of the evidence against the present applicant and the reason for the assault, no sympathy can be shown to the present applicant.

The application stands rejected.

(SARANG V. KOTWAL, J.)