

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

CRIMINAL BAIL APPLICATION NO.2238 OF 2021

Aatish Alias Akshay Suresh Waidande	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Hassnain Kaazi Sayyed for the Applicant

Mr. A. A. Palkar, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 28th SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 49/2021 registered with the Kondhwa Police Station, Pune City, for the alleged offence punishable under Section 302 of the Indian Penal Code.

3 Learned counsel for the applicant submits that although there are eye-witnesses with respect to the assault, the statements of witnesses

will reveal that it was the deceased who first threw a stone at the applicant, pursuant to which, the applicant picked up a stone and threw it on the deceased. He further submits that the statements of the eye-witnesses will further reveal that the applicant and deceased were not known to each other and as such, there was no motive to cause the death of the deceased. He submits that the applicant has no antecedents and that investigation is complete and charge-sheet is filed.

4 Perused the papers. According to the complainant-Krishna Hake, he received a call on his mobile from one Pappu AAtke informing about the death of Dyanoba Dhanage (deceased) caused by some unknown person at Shivneri Kondhwa vicinity near P.M.C water tank. Pursuant thereto, the complainant went and identified the dead body of the deceased and lodged a complaint/FIR as against the unknown person with Kondhwa Police Station on 19th January 2021.

5 During the course of investigation, the applicant was arrested. Statements of several eye-witnesses were recorded, both, under Section 161 and 164 of the Code of Criminal Procedure. The statements of the eye-witnesses reveal that the witnesses had gone with the applicant in the Shivneri Kondhwa vicinity for having dinner. According to the witnesses,

they also consumed alcohol. The witnesses have further stated that the applicant was heavily drunk and that they were all sitting and chatting. They have further stated that suddenly, the applicant started abusing them whilst having dinner, pursuant to which, some of the friends got up and went outside the shed. Thereafter, the other friends also went out. They have stated that the applicant came out of the shed and started abusing them. According to the eye-witnesses, in an open area on the opposite side, there was one person, who was under the influence of alcohol. He also started abusing. They have stated that the said person not only started abusing, but even picked up a stone and was about to throw at the applicant when the applicant picked up a big stone and threw it in the direction of the deceased. The witnesses have stated that the said person i.e. Dyanoba Dhanage (deceased) was heavily drunk and so was the applicant. The stone pelted by the applicant hit the head of the deceased, as a result of which, he sustained a bleeding injury and died on the spot. The post-mortem report reveals the cause of death as 'head injury'. It appears that the applicant and the deceased were not known to each other and that the quarrel took place all of a sudden.

6 Whether or not applicant had the intention to cause the death of the deceased and whether the offence would fall within the four corners of

Section 302 or would constitute a lesser offence, is a matter, which will be decided by the trial Court. The applicant has no antecedents. Investigation is complete and charge-sheet is filed.

7 Considering the aforesaid, further detention of the applicant is not warranted. Accordingly, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, until framing of charge;

- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;
- (vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is allowed in the aforesaid terms and is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.