

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

CRIMINAL BAIL APPLICATION NO. 2445 OF 2021

Sachin Hanumant Kotwal ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Prashant M. Patil , for the Applicant.

Mrs. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 7th December, 2021.

PRONOUNCED ON : 20th December, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 855 of 2020 registered with Chakan Police Station, District-Pune for the offences punishable under Sections 302, 120B r/w 34 of the Indian Penal Code (IPC).

2 It is the case of prosecution that informant is the wife of Rajendra Jalindar Kale (deceased). The deceased had purchased one guntha of land at mouje Kadachiwadi, Taluka Khed, District Pune. In the year December 2018 people had started the work of drainage. At that time

accused Satyam Dattatray Kad, Akshay Suresh Kad, Mahesh Baban Kad, Sachin Hanumant Kotwal (applicant) had asked the deceased as to why the work of drainage was not given to them and if the said work is to be carried out then he should pay Rs.50,000/- otherwise they would kill him. The deceased accordingly had lodged the report and all of them were arrested. Since then the said accused were having grudge against the deceased.

3 According to prosecution, on 26/07/2020 at about 7-15 p.m. the informant had received a message from her neighbour, namely, Zitre Kaka that deceased is being assaulted by three persons and accordingly she rushed to the spot. The informant found that the deceased was lying in a pool of blood. Accused Satyam Dattatray Kad and two unknown persons were standing there armed with sickle in their hands. The informant accordingly lodged the report.

4 Mr. Patil, learned Counsel for the applicant, submits that in the alleged incident there were in all seven accused persons including three juveniles in conflict with law. Learned Counsel invited my attention to the statements of prosecution witnesses, namely, Pranav Mohan Choudhary, Datta Subhash Zikare, Akshay Laxman Chandanshive, Samadhan Rajendra Patil and Sangita Navnath Dhengale and submits

that none of the witness say that the applicant was assailant. Learned Counsel also invited my attention to the statement of one Narendra Vijay Thakur recorded under Section 164 of Code of Criminal Procedure (Cr.P.C.) on 11/09/2020 by Judicial Magistrate First Class, Court No.2, Khed-Rajgurnagar and would submit that even the statement of this witness also does not in any manner indicate the name of applicant. The only allegation against the present applicant is that he was one of the conspirator and on that basis he has been arraigned in the offence. Investigation is over. Charge-sheet has been filed. In such circumstances, applicant deserves to be enlarged on bail.

5 Ms. Anamika Malhotra, learned APP, on the other hand, submits that the motive behind the incident is clearly stated in the First Information Report (FIR). The present applicant along with other accused including juvenile in conflict with law hatched a conspiracy and as a result of which the other accused committed the murder of the deceased. Learned APP further submits that there is CDR which shows that the applicant was continuously in touch with the other accused. Learned APP also invited my attention to the statements of prosecution witnesses, namely, Pranav Mohan Choudhary, Datta Subhash Zikare, Sambhaji Shantaram Parhad and Nilesh @ Anil Dyaneshwar Lashkare.

Besides, there are antecedents and nine crimes have registered against the applicant. In view of this, the applicant does not deserve to be enlarged on bail.

6 Perused investigation papers.

7 From the FIR the motive attributed to applicant and others is that since the work of drainage was not given to the accused including applicant, they were annoyed and had demanded Rs.50,000/- from the deceased which was also not given. Rather, the informant had lodged the report against them and as a result of which they were arrested in the year December 2018. Since then, according to prosecution, the accused and applicant were nursing grudge against the deceased. It is also clear from the FIR that the informant was knowing the present applicant when she reached at the place of occurrence, she saw accused Satyam Dattatray Kad and two unknown persons standing there armed with sickles. She nowhere says that the present applicant was also there.

8 It is then seen from the record that her supplementary statement came to be recorded on 12/08/2020 and then for the first time she introduced the theory of conspiracy and included the applicant. I have

also gone through the statements of the prosecution witnesses pointed out by learned Counsel for the applicant and as also by learned APP.

9 The statement of Pranav Mohan Choudhary shows all about the incident. It seems that he had witnessed the incident but he nowhere attributes the presence of applicant at the place of incident. Similar is the statements of Datta Subhash Zikare, Akshay Laxman Chandanshive, Samadhan Rajendra Patil and Sangita Navnath Dhengale.

10 There is also statement of Narendra Vijay Thakur recorded under Section 164 of Cr.P.C. on 11/09/2020 by Judicial Magistrate First Class, Court No.2, Khed-Rajgurnagar. From this statement it appears that one juvenile in conflict with law had called him on mobile and, therefore, he went to meet him. There he saw one person i.e. deceased passing on his Honda Activa. The said juvenile in conflict with law then suggested this witness that they should follow him as he had some work with the said person. Later on, he revealed the name of said person as Rajendra Kale i.e. deceased. Said juvenile in conflict with law revealed the name of another juvenile in conflict with law. His statement then shows that the deceased was assaulted by juvenile in conflict with law by means of sickle and sword. Interestingly, this witness also does not show the

presence of applicant.

11 I have also gone through the order of the learned trial Court. It appears that the learned trial Court relied on the statements of Sadashiv Dnyandeo Singote, Sharan Rajappa Gaikwad and Sambhaji Shantaram Parhad. I have carefully gone through the statements of all these witnesses. It is all about the contents of FIR and shows that all the accused, including the applicant, on account of earlier lodging of complaint against them i.e. the complaint lodged in the month of December 2018 against them. Except that there is nothing on record and, in my view, the death threats alone will not be sufficient to implicate the applicant in the offence particularly when, no other cogent and convincing evidence is forthcoming. Even the statement of Nilesh @ Anil Dyaneshwar Lashkare points out involvement of juvenile in conflict with law.

12 As far as the allegation of criminal conspiracy is concerned, that will be a matter of evidence and will have to be established at the time of trial.

13 As far as the antecedents of the applicant are concerned, having

regard to the nature of offence appearing against him in the present matter that factor alone will not help the prosecution. I am of the considered view that prima-facie there is no overwhelming evidence against the applicant. Therefore, he has made out a case for bail. Hence, the following order.

ORDER

- (i) Applicant- Sachin Hanumant Kotwal shall be released on bail in C.R. No. 855 of 2020 registered with Chakan Police Station, District-Pune on his executing P .R. bond in the sum of Rs. 25,000/- with one or more sureties in like amount.
- (ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.
- (iii) The applicant shall not indulge in similar activity in future.
- (iv) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.
- (v) Bail before the trial Court.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA
PRAKASH
PATIL

(V. G. BISHT, J.)

Digitally signed
by REKHA
PRAKASH PATIL
Date: 2021.12.20
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