

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2245 OF 2021

Suraj Dattu Gaikwad	...	Applicant
Versus		
State of Maharashtra	...	Respondent

Mr. Priyal Sarda, for the Applicant.

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

CORAM : V. G. BISHT, J.

RESERVED ON : 26th October, 2021.

PRONOUNCED ON : 15th November, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.363 of 2020 registered with Pimpri Chinchwad Police Station, District- Pune for the offences punishable under Sections 302, 307, 324 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the informant, namely, Rafique Amin Maner, at the relevant time, used to work as Sweeper at Ananddham Smashan Bhumi, near Morwadi Auto Cluster, Chinchwad,

Pune. Raju Gopal Janrao (since deceased) was a watchman. On 01/06/2020 the informant was on duty. At about 6.45 p.m. deceased told him that he would go to his house to bring tiffin. Later on, the informant made a phone call to deceased as he was in need of key of gate. At the relevant time, one Sadavarte, who used to supply woods at Smashan Bhumi told him that he would go and will fetch deceased on his two wheeler and accordingly said Sadavarte went on his motorcycle.

3 Prosecution next contends that at about 7-20 p.m. three unknown persons came. The pillion rider, who was armed within a centering wooden plank, got down and asked the informant where was deceased. The other two boys also alighted from the two wheeler and were also armed with centering wooden plank in their hand. The prosecution alleges that one of them attempted to give the blow by means of wooden plank on the head of the informant, however, the informant escaped the blow which hit on his left hand. He was then assaulted on his left hand twice. According to prosecution, in the meantime, the informant saw deceased and said Sadavarte coming towards Smashan Bhumi on motorcycle. He immediately told them that some boys had come to assault him. Afterwards informant along with deceased and said Sadavarte sped on the two wheeler and proceeded towards the Kamani

of Laltopi Nagar, Pimpri. The prosecution further alleges that all those boys followed them and assaulted the deceased by wooden centering plank on his head and back and injured him grievously. Later on, those boys fled away. Accordingly, FIR came to be lodged. It appears that during the course of treatment deceased succumbed to the injuries and, therefore, Section 302 of the Indian Penal Code came to be added.

4 Mr. Sarda, learned Counsel for the applicant, submits that the name of the present applicant-accused is not at all revealed in the FIR. There is no direct or circumstantial evidence against the applicant. Although, test identification parade has been carried out but the same suffers from infirmity inasmuch as the same was not taken as per guidelines given by this Court. Learned Counsel invited my attention to the statements of witnesses and the discrepancies appearing therein. The deceased allegedly sustained only one injury. There was no recovery from the applicant. Since the investigation has been completed and charge-sheet has been filed no purpose will be served by keeping the applicant behind the bar. For all these reasons, learned Counsel urged that the applicant be enlarged on bail.

5 Smt. Malhotra, learned APP, on the other hand, opposed the

submissions by submitting that the statements of prosecution witnesses clearly reveal the involvement of the accused in the offence. There are criminal antecedents. In such circumstances, the application being devoid of merits is liable to be rejected.

6 Perused the FIR and investigation papers.

7 Admittedly, the name of the applicant is nowhere revealed in the FIR. There is a statement of Dhammadeep Shankar Sadavarte, a material eye witness to the incident, who had gone to fetch the deceased on his two wheeler. He supports the contents of FIR. Even he stated that if those three persons were shown to him, he would identify them as he had seen their faces in the light of street lamps.

8 It is pertinent to note that the statement of said Dhammadeep Shankar Sadavarte again came to be recorded under Section 164 of Criminal Procedure Code ("Cr.PC." for short) by Judicial Magistrate, First Class, Pimpri, Pune on 21/08/2020. I may mention here that his first statement was recorded on 03/06/2020 i.e. to say this statement under Section 164 of Cr.PC. came to be recorded after a gap of 2 and ½ months and for the first time in the statement not only he gave the

registration number of Aactiva vehicle on which the assailants had allegedly come but also revealed the name of present applicant and one Sunil Jadhav. It is quite surprising that after such a long period he could remember the registration number of the Aactiva scooter and further about the revealment of the names of applicant and other accused, namely, Sunil Jadhav. Why these facts were not earlier revealed at the first available opportunity is nowhere explained by this material witness.

9 Similar is the case with informant whose statement under Section 164 of Cr.PC. also came to be recorded on 21/08/2020. However, the informant did not reveal the registration number of the vehicle but for the first time gave the name of applicant and other accused without any explanation as to why their names were earlier withheld at the time of lodging of FIR.

10 Coming to the aspect of test identification parade, again the memorandum of test identification parade came to be prepared after more than two months of the alleged incident. The significant part of the memorandum of test identification parade is that the informant failed to identify the present applicant, however, he was able to identify accused Sunil Gorakh Jadhav. It may be that the prosecution witness

Dhammadeep Sadavarte could identify both the accused, namely, Sunil Gorakh Jadhav and present applicant but in view of the discrepancy noted from his statement recorded under Section 164 of Cr.P.C. vis-a-vis his very first statement of 03/06/2020, it would be hazardous to place any implicit reliance at this stage. The important aspect regarding non identification of the present applicant by informant cannot also be overlooked.

11 Lastly, the criminal antecedents. According to the report of investigating officer addressed to the APP, it appears that there are six FIRs pending against the applicant. I am aware that the criminal antecedent is one of the important factor which needs to be considered at the time of granting or refusing the bail. In present case, I have already discussed the nature of offences appearing against the applicant. Having regard to the nature of crime and the material on record, in my considered opinion, the present application deserves consideration.

12 In view of this, I am inclined to allow the application. Hence, the following order.

ORDER

(i) Applicant- Suraj Dattu Gaikwad shall be released on bail in C.R.

No. 363 of 2020 registered with Pimpri Chinchwad 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 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.

(iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(v) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL

Date: 2021.11.15
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