

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2382 OF 2021

Sidhesh Kushanchand Chavan ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr.Anand S. Patil for the Applicant.
Mr.R.M. Pethe, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 25th OCTOBER 2021

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P.C.

. This is second bail application filed by the applicant for release on bail. The applicant happens to be accused No.1. The applicant had previously filed Criminal Bail Application Stamp No.2395 of 2020. The accused No.2 Vaibhav Rajput had also filed Criminal Bail Application Stamp No.1779 of 2020. Both these applications were dismissed by common order dated 24 September 2020. This was after filing of the charge-sheet.

2. I have heard the learned counsel for the applicant and the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties I have gone through the record.

3. The learned counsel for the applicant submitted that there were certain grounds which were not taken by the applicant in the previous bail application and secondly certain aspects pointed out by the Additional Public Prosecutor when the previous bail application was filed are also incorrect and not borne out of the record. In order to elaborate the learned counsel for the applicant points out that there is no recovery of blood stained clothes from the applicant. He pointed out that a jeans pant was seized from the applicant which was not bearing blood stains. Insofar as the recovery of a T-shirt is concerned, it is pointed out that it was on the alleged disclosure statement made by the co-accused Vaibhav Rajput under Section 27 of the Evidence Act. He therefore pointed out that there is no discovery of any incriminating article at the instance of the applicant.

4. Insofar as the identification parade is concerned it is held after a period of more than one month. The learned counsel submitted that it is pointed out that on the next day of the incident photograph of the applicant along with co-accused was published in a news paper and on account of which the identification parade would loose any significance. It is submitted that the statement of Gaurav before whom the deceased had allegedly made a denying declaration also cannot be accepted. Lastly, it is submitted that this is a case of a single blow and it is not clear that the blow was given by the applicant. There

is no material to show that the applicant shared common intention with co-accused Vaibhav and the juvenile.

5. The learned Additional Public Prosecutor pointed out that there is no change in the circumstances after filing of the charge-sheet. He submitted that this is not the stage where the material can be appreciated in details. It is submitted that the previous bail application is rejected, after considering the contentions raised at that time and in the absence of any change in circumstances the present application is not maintainable.

6. I have considered the submissions made. It is true that the identification parade is held after a period of one month and according to the applicant the photographs of the applicant and co-accused was published in the news paper on the next day of the incident. The record also discloses that the recovery of the T-shirt was at the instances of the co-accused. However, *prima facie* it appears that according to the prosecution the deceased was called by the present applicant, the co-accused along with the juvenile from his house and therefore was allegedly assaulted. *Prima facie* there is a statement of Mr.Garuav Naik who claims that the deceased had called him on his phone and stated about assault by the co-accused. *Prima facie* it appears that according to Gaurav, deceased informed him that the present accused had taken/called deceased from his house. In my considered view,

this is not the stage where the prosecution evidence can be appreciated in details else otherwise it will prejudice either the prosecution or the defence at the trial. The material change in circumstances has been pointed out after the rejection of the previous application, so as to entertain, the present application. In this case the charge-sheet is already filed. In such circumstances, the Criminal Application is hereby rejected. The trial is hereby expedited. The learned Sessions Judge shall make an endeavor to conclude the trial within a period of one year from today.

C.V. BHADANG, J.