

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

CRIMINAL BAIL APPLICATION NO. 1145 OF 2020

Prashant Prakash Devkar Applicant

Versus

The State of Maharashtra Respondent

Mr Umesh H. Pawar, for the applicant.

Smt. A.A. Takalkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE :23rd MARCH, 2021

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 103 of 2020 registered at MIDC Kupwad Police Station, Sangali, on 10/7/2020 under sections 302, 307, 120(B), 143, 147, 148, 149, 109 of Indian Penal Code and under section 4 and 25 of Indian Arms Act. The applicant was arrested on 15/07/2020 and since then he is in custody.

2. Heard Mr. Umesh Pawar, learned counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The prosecution case is that there was enmity between Dattatraya Patole and accused No. 1 Nilesh Gadade. Therefore, accused No. 1 Nilesh Gadade, Sachin Chavan, Vaibhav Sejal, Mrutunjay Patole alongwith the present applicant hatched the conspiracy to commit murder of the deceased. The aforesaid persons alongwith Kiran Lokhande committed murder of deceased Dattatraya Patole. Accused No. 7 Swapnil Jadhav had burnt clothes of Sachin Chavan.

4. The actual incident took place on 10/7/2020 when the deceased had started on his motor cycle from Sahyadri Starch Factory. At that time accused Mrutunjay Patole and Kiran Lokhande informed Nilesh, Sachin and Vaibhav about the deceased leaving the place. Out of them, Nilesh, Sachin and Vaibhav intercepted the deceased and accused Nos. 1 and 2 assaulted him with sickle and sword.

5. The prosecution case against the present applicant is that he was part of the conspiracy and he had assured to get bail for the other accused.

6. The FIR was lodged by nephew of the deceased. But he was not an eye witness to this incident. He has stated of finding of the deceased in injured condition at that particular place. The post mortem note show that the deceased had suffered as many as 21 injuries including chopped wounds and incised wounds all over his body and cause of death was “ head injury”.

7. Learned Counsel for the applicant submitted that even as per the prosecution case, the applicant is not one of the assailants. His role was only of hatching a conspiracy and for that also there is hardly any evidence. Name of the applicant is mentioned in various statements of the co accused recorded under section 27 of the Evidence Act, pursuant to which recoveries were effected. He submitted that these portions of their statements are inadmissible and therefore there is no material against the present applicant. He submitted that there is only one witness and that is Sandeep Kamble who had seen all the accused discussing something together in evening of 08/07/2020. He submitted that, the said statement by itself does not help the prosecution case

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against the present applicant.

8. Learned APP opposed this application. She submitted that statement of Sandeep Kamble shows that the applicant had taken part in hatching the conspiracy. The offence is brutal and therefore the applicant should not be granted bail in this case.

9. I have considered these submissions. With the assistance of both learned Counsel, I have perused the charge-sheet. Post-mortem notes show injuries caused by sword and sickle. At this stage, the allegations are against accused Nos. 1 and 2 of causing these injuries. It is not the prosecution case that the applicant was at the spot. None of the eye witnesses has identified the applicant as one of the assailants.

10. There are statements of the eye witnesses namely Shashikant Mane, Suresh Shinde, Amit Shinde, Kiran Magdum, Yogesh Rathi, Somnath Chavan, Ganesh Patil, Akshay and Ashok More. None of these eye witnesses has named the present applicant and none of them has identified the present applicant.

Some of the witnesses have named the main accused but even these witnesses have not named the present applicant. Therefore there is no direct evidence against the present applicant.

11. There is statement of one Sandeep Kamble as mentioned earlier but that statement is rather innocuous. On 08/7/2020 this witness had seen the accused Nilesh Gadade, Sachin Chavan, Vaibhav Sejal, Mrutunjay Patole and the applicant discussing something outside a furniture shop. That by itself does not connect the present applicant with the present crime.

12. Apart from that there are statements of co-accused Nilesh Gadade and Sachin Chavan, pursuant to which the weapons and clothes were recovered. In these two statements there is reference of the present applicant but those are inadmissible portions of the statements. Pursuant to those portions nothing was recovered. The main statements of these two accused are about concealment and willingness to show the place where the weapons and clothes were concealed. Rest of the portions of their statements are inadmissible and therefore cannot be used against

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the present applicant. The co-accused Mrutunjay had shown the place where the conspiracy was hatched but nothing was recovered pursuant to that statement. Therefore, considering all the material on record, there is no incriminating material against the present applicant. The investigation is over and the charge-sheet is filed. The applicant is in custody since 15/07/2020. Therefore no purpose will be served by the keeping the applicant behind bars during the entire period of trial. He can be granted bail.

13. Hence the following order.

ORDER

- (i) In connection with C.R. No. 103 of 2020 registered with MIDC Kupwad Police Station, Sangli, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)