

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

CRIMINAL BAIL APPLICATION NO. 1197 OF 2020

Avinash Mohan Bamne

... Applicant

Versus

The State of Maharashtra

... Respondent

.....

Mr. S. V. Marwadi, Advocate for the Applicant.

Ms. M. R. Tidke, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd FEBRUARY, 2021

PER COURT:

1. This is an application for bail in C.R. No. I-703 of 2019 registered with Kashimira Police Station, Dist. Thane (Rural) for offences under Section 302 r/w Section 34 of Indian Penal Code. The applicant was arrested on 19th November, 2019.

2. The case of the prosecution is that the deceased was working with the applicant. Since his salary was not paid, he took away 4 speaker amplifier from the godown of the applicant. The applicant and his associate assaulted the deceased with knife and wooden log. They took the deceased on scooter and threw his body at MIDC Road.

3. Learned counsel for the applicant submitted that the

RajeP.
Aher
Digitally
signed by
RajeP. Aher
Date:
2021.02.24
20:29:57
+0530

applicant has been falsely implicated in this case. No role is attributed to the applicant in the FIR. The FIR is based on hearsay evidence. Statement of Suraj Vishwakarma dated 19th November, 2019 mentions that the applicant had assaulted him by knife and co-accused had assaulted by wooden log. The head injury sustained by the deceased is attributed to another accused. Post-mortem Report does not indicate injury by sharp weapon. The opinion as to the cause of death was reserved. It is submitted that opinion of final cause of death produced by the prosecution mentions that death is due to head injury/intracranial hemorrhage. The applicant cannot be held responsible for head injury. Overt act attributed to the applicant can at the most invite offences under Sections 323 or 324 of IPC. The applicant is in custody since last two years.

4. Learned APP submitted that eye witnesses to the incident has attributed specific role the applicant. The deceased was in the company of the applicant. The eye witnesses have stated that the applicant and the co-accused have assaulted the deceased. The applicant is attributed role of assaulting by fist and kick blows and also by knife. The statement of the eye witnesses shows that the deceased was confined by the applicant and the co-accused. He was questioned for committing theft of goods. This is not the stage to bifurcate the role attributed to the applicant and co-accused. The

deceased was employee of the applicant and he was instrumental in assaulting him which has resulted in death.

5. I have perused the documents on record. The FIR was lodged by the father of deceased. Deceased Harshal was working with the applicant. The body of deceased was found near the gutter situated at Krishna Garden Building. The father of deceased was informed about the assault by Mangesh Pathak. Charge-sheet on record does not show the statement of Mangesh. However, statements of witnesses indicate that the deceased was in confinement with applicant. He was being questioned by applicant. Eye witness Suraj had stated that on account of theft of goods the applicant and the co-accused Rohit were questioning deceased. Both of them were assaulting him by fist and kick blows as well by knife and wooden log. He also stated that the applicant was holding knife in his hand and co-accused Rohit was holding wooden log. They were continuously assaulting him. The submissions of learned counsel for the applicant is that there is no corresponding injury by knife being caused to death of deceased. However, it is pertinent to note that eye witnesses have stated both have assaulted by fist and kick blows and thereafter by knife and wooden log. The body of the deceased was thrown at the place where it was found. The applicant is the main accused. The deceased was being confined and

questioned and assaulted at the instance of the applicant. The submission advanced by the learned counsel for the applicant cannot be considered at this stage. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 1197 of 2020 is rejected and stands disposed off accordingly.
- (ii) Trial is expedited.
- (iii) It is clarified that the observations made in this order are prima facie for considering the application for bail and the trial Court shall not be influenced by the same during the trial.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)