

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1167 OF 2020

Vikas Murtappa Biradar

Applicant

versus

The State of Maharashtra

Respondent

Mr.Manoj J. Bhatt for applicant.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th June 2021

PC :

1. This is an application for bail in CR No.I-94 of 2016 registered with Vashi Police Station for offences under Sections 302 r/w 34 of Indian Penal Code. The applicant was arrested on 15-3-2016.

2. The prosecution case is that the first informant is auto rickshaw driver. On 14-3-2016 he was waiting at M.G.Complex, Sector-14, Vashi which is an auto stand. He saw three persons fighting with each other. The first informant and other persons went to the place of assault. One of them was assaulting the victim on his face. The head of the victim was banged on the floor. The other person had assaulted by fist and kick blows on the stomach and private part of the victim. The applicant and the co-accused were arrested. On completing investigation charge sheet was filed.

3. Learned advocate for applicant submitted that for a period of about five and half years the applicant is in custody. The prosecution

has examined three witnesses. However, evidence of third witness was recorded on 9-10-2018 and thereafter there is no progress in trial. Taking the prosecution case as it is, the offence would not fall within the purview of Section 302(II) of IPC and at the most it could be a case of offence u/s.304(II) of IPC. There are no criminal antecedents against applicant. The motive for assaulting the victim is not clear. Considering the period of custody, the applicant be released on bail.

4. Learned APP submitted that the victim had sustained about 17 injuries. Specific overt act of assault has been attributed to the applicant. One of the eye witness has stated that the applicant has assaulted the victim on his head. The offence u/s.302 of IPC is, prima facie, made out.

5. The role attributed to the applicant by the first informant is that he had assaulted the victim by kick blows on abdomen and private part. Similar role is attributed to him by another eye witness. One of the witness apparently alleges that the applicant had also assaulted the victim on his head. Learned counsel for applicant pointed out the post mortem report and submitted that there was no injury on the private part or on the abdomen of the victim. Undisputedly no weapon was used in assaulting the victim. The applicant is in custody for five and half years. Considering the factual aspects, bail can be granted to the applicant. Hence, I pass following order :

ORDER

(i) Bail Application No.1167 of 2020 is allowed and disposed of;

- (ii) The applicant is directed to be released on bail in connection with CR No.I-94 of 2016 registered with Vashi Police Station, on executing PR bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report Vashi Police Station once in a month on every first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;
- (v) The applicant shall not tamper evidence and shall not approach the witnesses.

(PRAKASH D. NAIK, J.)

MST