

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

CRIMINAL BAIL APPLICATION NO. 1275 OF 2020

Dattatraya Hanmant Survase Applicant

Versus

The State of Maharashtra Respondent

Mr. Jaydeep D. Mane for Applicant.

Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th JANUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 316 of 2020 registered at Pandharpur Taluka police station, on 19/06/2020, under section 302 and 120-B r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 19/06/2020 itself and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. The prosecution case is in respect of death of one Savkar @ Mahadev Salunkhe. His two wheeler collided with a tempo. He was dragged in that incident under the tempo and

suffered many injuries resulting in his death. The prosecution case is that, said tempo was belonging to accused Bandu @ Suraj Dandge. It was deliberately driven on the wrong side, so that it would collide with the two wheeler of the deceased. In short, it was a well planned conspiracy hatched between all the accused. The applicant was the main accused who had enmity with the deceased Savkar and, therefore, he was arrested.

3. Heard Shri. Jaydeep Mane, learned counsel for the applicant and Ms. Dabholkar, learned APP for the State.

4. The learned counsel for the applicant submitted that, it was a case of pure accident and it was given a colour of murder because of ulterior motive. He submitted that the applicant himself had lodged an F.I.R. in respect of murder of one Sitaram who was real nephew of the deceased Savkar in this case. The allegation in that F.I.R. was that, Savkar had committed murder of his own nephew on some dispute regarding ancestral land. He submitted that the applicant was to give evidence in that case and to prevent him from doing so he was needlessly roped in in the present crime. The F.I.R. in this case is lodged by one Narayan Salunkhe who was

the father of deceased Savkar. Narayan was also accused in the case arising from the F.I.R. lodged by the present applicant. He submitted that, in the entire charge-sheet there is hardly any material against the present applicant barring a few statements which are in the nature of weak pieces of evidence. He, therefore, submitted that the applicant deserves to be released on bail. He submitted that, two co-accused namely Yogesh Chougule and Datta Pawar, who were almost similarly placed were granted bail by the sessions court. On that ground also the applicant's application should be considered leniently.

5. Learned APP objected grant of any relief in this application. She relied on certain statements showing conspiracy and to some extent transactions leading to his death. She submitted that, it was a well planned conspiracy and it was not a case of simple accident.

REASONS

6. With the assistance of learned counsel for the applicant and the learned APP, I have perused the entire charge-sheet. It is undisputed that the applicant had lodged his own F.I.R. in respect

of murder of Sitaram in which Savkar and his father were accused. There is one statement of Ganesh Magar in the present charge-sheet. It was recorded on 20/06/2020. He was a waiter in hotel Annapurna. He has stated that, on 16/06/2020 the applicant had come to the hotel with Bandu @ Suraj Dandge for lunch. They were discussing something loudly. This witness overheard them. It is his case that the applicant was telling Bandu Dandge that deceased Savkar would kill them and before he caused any harm, he should be eliminated. It is his case that, at that time, Bandu Dandge told the applicant that he would kill him by driving his tempo on him. The prosecution is heavily relying on this statement to show that there was a conspiracy between the accused to commit murder of the deceased.

7. There is one more statement of one Deepak Dhole. He has mentioned that the applicant and Bandu Dandge used to be together and Savkar had threatened Bandu Dandge, Datta Pawar and Yogesh Chougule that they should not give company to the applicant. The prosecution, therefore, wants to suggest that, even Bandu Dandge had grudge against the deceased Savkar.

8. Apart from that, the postmortem notes show many injuries suffered by the deceased. They were obviously suffered in the incident because deceased was dragged by the tempo. It is also undisputed that the tempo belonged to Bandu Dandge. Therefore, the question is whether Bandu Dandge had done it deliberately or it was an accident.

9. The entire charge-sheet does not show as to why Bandu Dandge should have held so much grudge against the deceased to think of eliminating him altogether. It is not the case of prosecution that the applicant had hired Bandu Dandge by paying him some money for eliminating Savkar. The alleged threats issued by Savkar to Bandu Dandge were not in presence of the applicant and there was no complaint lodged by the accused Bandu Dandge in that behalf. In any case, because both these statements referred to above, given by Deepak Dhole and Ganesh Pawar, were recorded after the applicant was arrested, these are very weak pieces of evidence.

10. The applicant had lodged his own F.I.R. against the deceased. The applicant had no real apprehension or reason to

commit murder of the deceased. He had taken recourse to approach the police in the past. In this view of the matter, considering the weak evidence against the applicant, he deserves to be released on bail. However, considering the inimical relations and possible retaliation by either of the parties, certain conditions of reporting to the police station are required to be imposed.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 316 of 2020 registered at Pandharpur Taluka police station, 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 applicant shall attend the concerned police station every fortnight till conclusion of the trial.
- (iii) The applicant shall not contact any of the witnesses, in any manner, in this case and shall not tamper with the evidence.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)