

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

CRIMINAL BAIL APPLICATION NO. 1411 OF 2020

Diwakar Rakesh Singh	 Applicant
Versus	
The State of Maharashtra	 Respondent

Ms. Priyanka Dubey a/w Mayank Tripathi i/b Hedgehog and Fox, for the applicant.

Mr. S.H. Yadav,, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 8th APRIL, 2021

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.1146 of 2018 registered at Tulinj Police Station, on 24/10/2018 under section 302 read with Section 34 of the Indian Penal Code. The applicant was arrested on 24/10/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Ms. Priyanka Dubey, learned counsel for the applicant and Mr. S.H. Yadav, learned APP for the

State.

3. The prosecution case is that on 21/10/2018 there was a quarrel between the applicant and one Sunil Sahani. On 23/10/2018, the applicant assaulted the deceased initially with fist and kicks blows and then with a stick which was lying at the spot. He was joined by his relatives in assaulting the deceased. The deceased succumbed to his injuries and therefore the FIR was lodged and the applicant was arrested.

4. The FIR was lodged by widow of the deceased on 24/10/2018. She has given history regarding bad relations between the deceased and the applicant. On 22/10/2018, the deceased had assaulted the applicant, and, therefore, the applicant had suffered injuries to his eye. The deceased was residing at the room provided by one Dheeraj Patil. Because of the quarrel between the applicant and the deceased, Dheeraj Patil, had told the deceased to vacate the room and told him not to work with him. On 23/10/2018, at about 7.45 p.m., the

informant was told by one Upendra Rajbhar that, the applicant, his uncle and brother had assaulted the deceased with wooden stick, fist and kicks blows. Therefore she went to the spot. With the help of others, she took the deceased to hospital but he was declared dead before admission.

5. Learned Counsel for the applicant submitted that there was no mens rea for the applicant to commit murder of the deceased. The incident had occurred on spur of moment and therefore the offence does not fall within the meaning of murder as defined under section 300 of the Indian Penal Code. She submitted that there was no premeditation, as stick lying at the spot was used and it was not carried by the present applicant. She submitted the applicant is young boy and therefore leniency should be shown to him.

6. Learned APP opposed this application. He submitted that there are eye witnesses to the incident.

Considering the brutal attack mounted on the deceased, the applicant does not deserve any sympathy. He submitted that the offence under section 300 of the Indian Penal Code is made out. He submitted that there is recovery of wooden stick at the instance of the present applicant from bushes near the spot where the deceased was assaulted.

7. I have considered these submissions and with the assistance of learned Counsel I have perused the entire charge-sheet. There are eye witnesses to the incident. They are Rupa Rajbhar, Badamidevi Gupta and Upendra Rajbhar. Rupa has stated that she and her husband Upendra were going towards Bilalpada pond, at that time, they saw that the applicant was assaulting the deceased with wooden stick. He was accompanied by three others who were also assaulting the deceased with fist and kick blows. The deceased had fallen down unconscious and thereafter, the assailants had run away. Her statement is supported by her husband Upendra.

8. Apart from these two witnesses, Badamidevi Gupta has stated that, on that day at about 6.15 p.m., she heard some noise of quarrel. She came out of her shop. She saw that near a wall of Bilalpada pond, there was quarrel going on between the applicant and one unknown person. They were abusing each other. The present applicant pulled that unknown person and started assaulting him with kick and fists blows. He was joined by the applicant's brother and two others. At that time, the applicant picked up a bamboo lying near by. He assaulted the deceased on chest, back and leg. Therefore, the unknown person became unconscious. Thereafter the applicant and others went away from the spot. This witness has specifically named the present applicant though she has not named the victim. However, her statement is important as she has seen major part of the incident.

9. In this context, injuries suffered by the victim are important. The post mortem notes show that cause of

death was “ Intracranial heamorrhage and injury to both lungs and rupture of spleen caused by hard and blunt object with excessive and additional force”. The external injuries column mentioned that there was 13 injuries including multiple abrasions on back, knee and toes. All these injuries were serious. They were of big dimensions ranging from 10x 5 cm, 7 x 3 cm and 3 x 3 cm all over the body.

10. Thus it can be said that the deceased was assaulted brutally and cruelly. Therefore, the offence fall within the meaning of section 300 of the Indian Penal Code. There are eye witnesses to the incident. Considering the nature of injuries and direct evidence as well recovery of the stick at the instance of the present applicant, no case for bail is made out.

11. The application is rejected.

(SARANG V. KOTWAL, J.)