

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

CRIMINAL BAIL APPLICATION NO.1481 OF 2020

Dnyaneshwar Madhukar Pawar ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mrs. Tripti Shetty, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Mr. A. N. Palande, P. S. I. D.B. Marg Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th JANUARY, 2021.

PER COURT:

1. Leave to amend the prayer clause of the application.

Amendment may be carried out forthwith.

2. This is an application for bail in C.R. No. 211 of 2019 registered with D.B. Marg Police Station, Mumbai for the offence punishable under Section 302 r/w Section 34 of Indian Penal Code. The applicant was arrested on 2nd November, 2019.

3. The case of the prosecution is that, on 28th October, 2019 while the complainant was on duty, he received call informing that one helpless unknown person is lying injured in passage below railway foot over bridge. The victim was taken to the hospital. He

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was declared dead. It is alleged that the victim was involved in theft and hence some persons had assaulted him. During the course of investigation the applicant and Two other persons were arrested. On completing investigation, charge-sheet is filed.

4. Learned advocate for the applicant submitted that no weapon was used by any accused while assaulting the victim. There is no cogent evidence against the applicant to show his complicity. The offence under Section 302 is not made out. Except one witness all the other persons had failed to identify the applicant. The statement of witness who has identified the applicant does not attribute overt act of assault to the applicant. There are no criminal antecedents against the applicant.

5. Learned APP submitted that the C.C.T.V. footage shows the presence of the applicant at the scene of offence. He pointed out the statement of minor witness recorded on 29th October, 2019 in which it was stated that he had seen one Nanya and Vicky assaulted the victim. They were accompanied by some ladies. Learned APP also relied upon statement of Altaf Kasim Khan recorded under Section 164 of Cr.P.C. It is submitted that he has identified the applicant in test identification parade.

6. On perusal of statement of the minor victim, it appears

that he has referred to one Nanya and Vicky. The prosecution is presuming that Nanya is applicant. However, to confirm that the applicant is same person, no material is brought on record nor there is test identification parade. In any case the said witness had stated that the victim is assaulted by thin bamboo stick. The witnesses put up in the test identification parade has failed to identify applicant except Altaf. On perusal of his statement it is apparent that he has not attributed any role of assault to the applicant. He has stated that the victim was left near stair case of the foot over bridge by applicant and another person. In these circumstance, case for grant of bail is made out. Hence, I pass following order.

ORDER

- (i) Bail Application No.1481 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 211 of 2019 registered with D.B. Marg Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report D.B. Marg Police Station, Mumbai once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(iv) The applicant shall not tamper with the evidence.

(v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of Eight weeks in lieu of surety.

(vi) Application stands disposed of accordingly.

7. 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.)