

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

CRIMINAL BAIL APPLICATION NO. 1346 OF 2020

Suraj Subhash Bangar

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Ashok M. Saraogi for Applicant.

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

CORAM : SARANG V. KOTWAL, J.

DATE : 28th APRIL, 2021

(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 107 of 2020 registered at Kalyan Taluka police station, Dist. Thane, on 27/02/2020. Initially, the offence was registered under sections 326, 323 and 504 r/w. 34 of the Indian Penal Code (for short 'IPC'). Subsequently, after death of the informant Kapil Bhoir himself, section 302 of IPC was added. The applicant was arrested on 03/03/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Saraogi, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is based on the statement given by the deceased Kapil Bhoir himself. He has stated in his F.I.R. that, the informant's group was on inimical terms with the applicant's group. One Kundan Bangar had lodged a complaint at Titwala police station against informant's group. In that case, informant's younger brother Sachin was arrested. The informant himself was granted anticipatory bail. Therefore, Kundan's brother Sahil Bangar was holding grudge against informant's group. On 27/02/2020, at about 12:30p.m., the informant, along with his aunt Asha Bhoir had gone to the office of Circle Officer, Khadavli, in connection with Asha Bhoir's solvency certificate. They were waiting outside that office. At about 2:15p.m., suddenly, Sahil Bangar, Bhunudas Gharat, Rohit Bangar and one unknown person approached the informant. Sahil was having a bat, Bhanudas and Rohit were having logs. They started abusing the informant. Sahil gave a blow with his bat on the informant's forehead. Bhanudas assaulted him on his legs. Rohit

assaulted him on his shoulder and right hand. The unknown person assaulted him with kicks and fist blows. The informant's aunt raised shouts. Accused went away. The informant was taken to Government hospital at Goveli. There he was treated and then he was transferred to Meera Hospital, Kalyan. There he gave his statement. On this basis the F.I.R. was lodged.

4. Shri. Saraogi, learned counsel for the applicant submitted that the most important statement in this charge-sheet is that of the informant himself and he has not named the present applicant, though, admittedly, informant was knowing members of the rival group. He submitted that, one of the main accused Rohit, who was named in the F.I.R., was released by the police by filing a report under section 169 of Cr.p.c. He, therefore, submitted that it was a case of false implication. He also submitted that, there are statements of witnesses namely Jagdish Bhoir, Anil Bhoir, Pratap Chorge and Sharda Patil to whom the informant had allegedly given oral dying declaration. Except in the statement of Jagdish there is no reference to the applicant's name. He, therefore, submitted that the applicant is falsely implicated and he deserves

to be released on bail.

5. Learned APP relied heavily on the statement of Jagdish which mentions that the informant had given oral dying declaration naming the present applicant.

6. I have considered these submissions. With the assistance of both learned counsel I have perused the charge-sheet.

7. The postmortem notes show that the deceased had suffered 8 injuries. There were fractures on hand and leg and there was a injury on the forehead. There was fracture of nose. The cause of death was reserved, however, injuries are in consonance with the informant's statement mentioned in the F.I.R. Significantly, the F.I.R. itself does not name the present applicant. The F.I.R. is very specific. It is mentioned in the F.I.R. that, Sahil, Bhanudas, Rohit and one unknown person assaulted the first informant. The record shows that the informant was knowing members of accused's group. Therefore, there is no reason for the informant to have omitted name of the present applicant, if the applicant had taken part in the assault. Significantly, Rohit was found to be at the different place, at the time of incident,

therefore, report under section 169 of Cr.p.c. is filed in his favour. There appears to be some exaggeration and an attempt to implicate more accused than the ones who had actually committed the assault. There is no recovery at the instance of present applicant. There is recovery of bad and wooden stick at the instance of accused Sahil.

8. There is an eye witness to the incident i.e. Asha. However, she claims that there were three unknown assailants. She was not knowing them and she had not clearly seen faces of the assailants. While, Kapil was being taken to hospital in a rickshaw, he told her that Pintya and Bhanudas had assaulted him. According to this witness, Kapil had not named the present applicant.

9. Similarly, statements of Pratap, Anil and Sharda do not mention that Kapil had named the present applicant. These witnesses have stated about the oral dying declaration given by Kapil. According to Pratap and Anil, Kapil had named Pintya and Bhanudas. According to Sharda, Sahil and two others had assaulted him. Thus, all these statements are actually in favour of

the present applicant.

10. Only in the statement of Jagdish, it is mentioned that, in the hospital he had met Kapil and at that time he had told him that Pintya, Bhanudas and the applicant had assaulted him. There were no further details. His statement is a solitary piece of evidence against the present applicant. Comparing this statement with others statements, sufficient doubt is created about the participation and presence of the present applicant in the incident. In this view of the matter, the applicant deserves to be released on bail. He is already in custody since 03/03/2020. The investigation is over and the charge-sheet is already filed. Therefore, I am inclined to grant bail to the present applicant.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 107 of 2020 registered at Kalyan Taluka police station, Dist. Thane, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

- (ii) Looking at the prevailing circumstances, it may not be possible for the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within three months from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)