

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

CRIMINAL BAIL APPLICATION NO.1475 OF 2020

Pawan Kumar Rajdev Yadav Applicant
Versus
The State of Maharashtra Respondent

Mr. Malgaonkar, Advocate i/b. Sanjay Singh, for the Applicant.
Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th MAY, 2021
[Through Video Conferencing]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.1136/2019 registered at Virar police station, on 01.12.2019 under Sections 141, 143, 147, 149, 324, 323, 504, 506 of the Indian Penal Code. Subsequently Section 302 of IPC is added. The applicant was arrested on 16/12/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The FIR was lodged by one Shivbhawan Diwakar on 01/12/2019. Subsequently, he succumbed to his injuries on 13/12/2019 and thereafter section 302 of IPC was added.

3. In the F.I.R., Shivbhawan has stated that on 30/11/2019, at about 8:30p.m. he was present at a construction site at Khairpada with his employer Vijay Pandey. At that time, one Tabelawala Yadav, his brother Pal rickshawala, Halchal Yadav, Divakar Pandey, Pintu Yadav, present applicant and 2 to 3 unknown persons came there. Halchal and Divakar started quarrelling with Vijay Pandey. They were demanding money and their land. The informant intervened and told both of them that the dispute could be resolved on the next day. Halchal Yadav and Divakar Pandey started beating him with kicks and fist blows. Vijay was also similarly assaulted. Tabelawala Yadav and his brother kicked the informant on his stomach and private parts. The applicant, Pal rickshawala and Pintu Yadav gave blows with bamboo on the informant's thigh. The informant's brother Anil came there. He took the informant first to Nallasopara, then to Sanjivani Hospital at Virar and then to Shatabdi hospital at Kandivli. On this basis the F.I.R. was lodged.

4. Heard Shri. Malgaonkar, learned counsel for the

applicant and Ms. Pallavi Dabholkar, learned APP for the State.

5. Learned counsel for the applicant submitted that the F.I.R. itself shows that the applicant did not have any intention to commit murder of the deceased. He had given blows allegedly only on the thigh and not on the vital parts. He submitted that the applicant did not share any common intention or common object with others to cause murder.

6. Learned APP opposed this application and submitted that the role of the applicant is specifically mentioned. He had taken part in the assault with others and, therefore, he cannot escape his liability.

7. I have considered these submissions. Apart from the first informant, statement of Vijay Pandey who was the other victim is important. He has narrated the incident in the same manner as narrated by the first informant. Therefore, at this stage, there is material to show that the applicant had given blow with bamboo on the thigh of the deceased.

8. The question arising in this case is as to whether

the applicant can be said to have committed offence punishable under section 302 r/w. 149 of IPC. For that purpose the postmortem notes are important. There are three surface wounds. One is injection mark, the other two marks are incised wounds. One of them is described as drainage wound. Deceased was not assaulted with any sharp weapon. Cause of death was mentioned as “Death due to pneumonia, peritonitis, pus in abdominal cavity with history of assault (unnatural)” This shows that the deceased had developed complications due to assault caused on his stomach and private parts. That particular role is specifically attributed to Tabelawala Yadav and his brother. The narration shows that target was Vijay Pandey and not the informant. The dispute of the main accused Tabelawaya Yadav and his brother was with Vijay and not with the informant. Others including the applicant had taken part in the incident after the informant had intervened. Thus, there was no premeditation and no preparation to cause assault on the informant as far as present applicant is concerned. He had allegedly given blows on the

thigh which has not caused fatal injuries. Pus was formed in the abdomen and that was attributed to Tabelawala Yadav and his brother. Thus, at this stage, there is considerable force in the submission of learned counsel for the applicant that the applicant cannot be said to have shared any common object or intention or even knowledge in causing such injuries which would have led to death of deceased. Therefore, there is scope to believe that the applicant has committed much lesser offence. Ofcourse, this fact will have to be tested during trial. However, at this stage, the applicant has sufficiently made out a case for his release on bail. Learned counsel for the applicant, on instructions, made a statement that the applicant is willing to furnish local solvent sureties.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.1136/2019 registered at Virar 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 local solvent sureties in the

like amount.

- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Gokhale