

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

CRIMINAL BAIL APPLICATION NO.1745 OF 2019

Rahul Brijlal Jaiswar
Versus
The State of Maharashtra

...Applicant
...Respondent

Mr. P. N. More i/b Mr. Nitin C. Kamble, Advocate for the Applicant.
Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
MONDAY , 15TH FEBRUARY 2021

P.C. :

1. Heard learned counsel for the applicant and the learned A.P.P for the State.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 270 of 2018 registered with the Bhandup Police Station, Mumbai for the alleged offences punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code and Sections 37(1)(a) and 135 of the Maharashtra Police Act.

3. Learned counsel for the applicant submits that the applicant is a young boy aged 20 years and is in custody since 2018. He submits that there are several discrepancies in the statements of witnesses, who had allegedly seen the incident. He submits that the possibility of somebody else assaulting the deceased-Sushil Gayaprasad Varma, cannot be ruled out.

4. Learned APP opposes the application.

5. Perused the papers. The incident is alleged to have taken place on 26th July 2018 at about 9.00 a.m. A perusal of the statements of witnesses (prior to the actual incident, time of the actual incident and post the incident), *prima facie* shows the complicity of the applicant in the alleged offence. The statement of witness- Manish Biganiya shows that on 25th July 2018 i.e one day prior to the incident, at about 8.00 p.m., the applicant was asking him, who Sushil (deceased) was, to which he replied that Sushil was his friend. According to witness-Manish, the applicant allegedly told him that he was going to kill Sushil. The said witness has stated that he tried to convince the applicant not to do so, after which they both left. The said witness-Manish has further stated that on 26th July 2018, he had again seen the applicant; that the applicant came and asked him where Sushil was; that when he did not disclose Shushil's whereabouts, the applicant abused him.

Witness-Manish has stated that as he was afraid of the applicant, he eventually pointed out Sushil to him, pursuant to which applicant went and held Sushil's collar, took him aside and started abusing him. He has further stated that after some time he saw Sushil had fallen on the road; that he was bleeding and that his friends were putting him in an auto-rickshaw.

6. The statement of another witness-Sachin Mishra, reveals that the applicant had pulled out a weapon from his pocket and had assaulted Sushil 2-3 times with the said weapon, as a result of which, Sushil fell on the ground. There are several other witnesses who have corroborated the same. The post-mortem report shows that the deceased had sustained a stab injury over the left side of his chest of size 2.5 cm x 1 cm x 12 cm, 2cm lateral to midline, 7 cm medial to left nipple, 7 cm below suprasternal notch as well as 2 CLWs. The cause of death is stated to be 'stab on chest'. Apart from the aforesaid evidence, there is recovery of a blood stained knife at the instance of the applicant. The motive for assaulting on Sushil was, that the girl who the applicant was in love, was now going around with Sushil, as a result of which the applicant was upset.

7. Considering the aforesaid material, this is not a fit case to enlarge the applicant on bail. The possibility of the applicant threatening/ intimidating

the witnesses also cannot be ruled out. Hence, the application is rejected.

8. However, having regard to the age of the applicant, the trial of the applicant is expedited. The trial court to conclude the case as expeditiously as possible and in any case, within one year from the date of the order.

9. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.