

Shambhavi
N. Shivgan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3239 OF 2019

Babalu Vishwas Dengale .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Aniket Nikam a/w Mr. Aashish Satpute a/w Mr. Amit Icham a/
w Mr. Piyush Toshnival i/by Mr. Vivek Arote, Advocate for the
Applicant.

Smt. Sharmila Kaushik, APP for State/ Respondent.

Mr. Sanjay Nagargoje, P.S.I., Yavat Police Station, Pune.

CORAM : SANDEEP K. SHINDE J.

DATE : 8th MARCH, 2021.

PER COURT :

1. It is to be observed from record, that Swapnil Shelar
(deceased) was eliminated over a rivalry, relating to contract of

extraction of sand from river bed. Brother of deceased reported the incident on 6th August, 2018, whereupon at 0.22 hrs., the subject crime was registered under Section 302 of IPC, against seven suspects. Admittedly, applicant was not amongst, suspects. However, it may be stated Santosh Jagtap, Sameer Jagtap, Deepak Dandavate, persons whose names were disclosed in the complaint, were released on bail; whereas Anil Mohite has been granted pre-arrest protection.

2. Investigation shows that on 6th August, 2018, statements of brother and father of deceased were recorded. But, both did not disclose the name of the applicant, as a suspect in the crime or otherwise. On 8th August, 2018 statements of wife and uncle of deceased were recorded. These two witnesses claim that they had seen the incident of assault by five persons. Both had

disclosed names of three persons i.e. Somnath, Ranjit Wazare and Vishal Mane, but could not identify other two persons, who were armed with sickle and assaulted deceased. The Test Identification Parade was held on 3rd October, 2018 in respect of two unknown persons, however, she could not identify the applicant, but Bapurao Shelar could.

3. Learned Counsel for applicant would submit that the incident had taken place on 5th August, 2018 at around 09:00 pm. The FIR was lodged on 6th August, 2018 at 0.22 hours by brother of deceased, who had not seen the assault. Admittedly, brother of deceased did not suspect the complicity of applicant. Thus, in the circumstances, assuming wife of the deceased had seen the incident of assault held by three known and two unknown persons, she would have disclosed the incident to brother of the

deceased, who had lodged the complaint. However, brother simply suspected complicity of seven persons. In fact brother, father, uncle and wife of deceased were living in one house. As such claim of wife and uncle of deceased that they had seen the assault, requires further scrutiny and thus to be kept out of consideration in these proceedings.

4. Be that as it may, the investigation reveals that, deceased had suffered fractures C.L.W. and crush injuries, but no incised injuries were found on the person of deceased. As against this fact, it is assertion of deceased's wife that that two unknown persons assaulted deceased with sickle. Thus, for this reason, wife's statement requires further scrutiny.

. That even otherwise, accused persons; Santosh Jagtap, Sameer Jagtap, Anil Mohite, Deepak Dandavate, whose names

were disclosed in the complainant, have been granted bail. The investigation in the case is over. The applicant is in the custody since August, 2018.

5. Thus, the evidence prima facie does not disclose the complicity of the applicant in the subject crime. As a result, application is allowed and hence the following order.

ORDER

(i) The applicant is directed to be released on bail in Crime No. 720 / 2018 registered with Yavat Police Station, Pune on executing P.R. Bond in the sum of Rs. 50,000/- with local solvent sureties in the like amount;

(ii) The applicant shall report to the Investigating Officer twice a month i.e. Second and Fourth Sunday of each month commencing from March, 2021 between 11:00

am. to 01:00 pm. till the charge is framed;

(iii) The applicant shall furnish his residential address as well as permanent address and contact details to the investigating officer within a week;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

6. Application is allowed and disposed of accordingly.

7. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE J.)