

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3247 OF 2019

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Shubham N. Pandhare

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Aniket U. Nikam with Mr.Piyush R. Toshnival with Aashish Satpute and Mr.Amit Icham i/b Vivek N. Arote for the applicant.

Smt.S.S. Kaushik, APP for the State.

API S.B. Chopade from Panchavati Police Station.

CORAM: BHARATI DANGRE, J.

DATED : 16th MARCH 2021.

P.C:-

1 Being arrested in C.R. No. I-263/2018 registered with Panchvati Police Station, Nasik and accused of the offences punishable under Section 302, 120B read with Section 34 of the IPC and Sections 3, 4(25) of the Arms Act and Section 135 of the Maharashtra Police Act, the applicant seek his release on bail on the ground that no custodial interrogation is any more warranted and that he is ready to abide by any terms and conditions for his release.

2 The applicant is arraigned as an accused in the said C.R which came to be registered on a complaint being filed stating that on 10th July 2018, at about 11.00 p.m, the

Tilak

complainant overheard frantic cry of his brother, Kishore from the open ground in front of the house and therefore, the complainant approached him. He saw some unknown persons assaulting his brother with sharp weapon and when he rushed towards his brother, the unknown persons fled away from the spot. Kishore was lying in pool of blood and it he was assaulted on his neck, back, legs. On the police being called, he was rushed to the hospital in an ambulance, where he was declared dead. It is in the backdrop of these allegations the offence has been registered.

3 Learned counsel Mr.Nikam submit that the post mortem report reveal multiple injuries and the cause of death is the combined effect of the said multiple injuries over face, neck, back and chest and it is opined that these injuries are sufficient in ordinary course of nature to cause death. The learned counsel would invite my attention to the supplementary statement of the complainant recorded on 2nd August 2018, after the suspects came to be arrested on registration of FIR and when he was confronted with the said accused persons in the Test Identification Parade. In the supplementary statement, the complainant assert that he has identified one Makrand S. Deshmukh, a co-accused as the person who had assaulted his brother with scythe. Another person whom he identified is accused Avinash who is also alleged to have assaulted by means of scuffle, he was holding. The third person

identified is the present appellant, Shubham Pandhre who, according to him has assaulted his brother by kicks and fists. In the supplementary statement, the complainant also state that on the date of the incident when he had responded to his brother's call for help and attempted to rescue him from the assailants, his other brother Naresh had followed the accused persons who had fled on the motor-cycle riding it triple seat.

It is this statement which Mr.Nikam rely upon in his submission that even the complainant has attributed him a role of assaulting the deceased by fist and blows and he was not one of the accused who had assaulted the deceased by means of dangerous weapon, resulting into multiple incise wounds, which were responsible for death of the deceased.

4 The charge-sheet includes statement of one Hemant Sathe who has stated that at 10.30 p.m, on 10th July 2018, he received a phone call from the co-accused Makrand and he was called near *dargah*, after some time when he reached there, he saw Makrand Avinash and Shubham (applicant) riding on the motor-cycle of Makrand and the motor-cycle being driven by Shubham and the other two were pillion riders. When he called Makarand on his mobile to inquire as to what purpose he was called, he stated that he was late, therefore, they have taken Shubham along with them. When he inquired with Makarand where they were headed to, he responded by stating that they were going for

undertaking the work of Venky Bai. This statement is relied by Mr.Nikam in support of his case that he was just a chance accomplice and it was not pre-planned, but since Hemant did not reach in time, Shubham was asked to ride the motor-cycle. There is recovery of motor-cycle at the instance of the present applicant and even his clothes have been seized, but the learned APP state that the report of Chemical Analysis about the clothes of the applicant is yet awaited.

5 On perusal of the material contained in the charge-sheet, it can be very well discerned that the presence of the applicant on the spot where the deceased was put to death is brought on record by collecting ample evidence but the evidence that he was the one who assaulted the deceased by dangerous weapons causing his death, is absent. On the other hand, the complainant himself has narrated to the contrary in his supplementary statement that he had assaulted the deceased only by fists and blows. Undisputedly, the effect of the applicant being charged with the aid of Section 34 of the IPC will be determined at the time of trial and with the aid of 34, he may be held liable for the act in the same manner as the other two co-accused are based on the principle of vicarious liability in criminal jurisprudence. However, this will have to be established at the time of trial. In such circumstances, the applicant is entitled to be released on bail since he is incarcerated since 11th July 2018 and

no possibility of he tampering with the evidence or fleeing away from the course of justice is expressed by the Prosecutor. Further, in absence of any antecedent, and he being a young boy aged 18 years, he is entitled to be released on bail. Hence, the following order :-

ORDER

- (a) The Applicant - Shubham N. Pandhare shall be released on bail in connection with C.R.No.I-263/2018 on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
 - (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
 - (d) The Applicant shall make himself available as and when required by the Investigating Officer.
- 6 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J