

NSC.

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

CRIMINAL BAIL APPLICATION NO.3637 OF 2019

Sunny Lajras Gajbhiv

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Charan Penthalia i/b Mr. Jai R. Gaikwad, for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th JANUARY, 2021

P.C. :

- 1 Heard learned counsel for the parties.
- 2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 816 of 2018 registered with the Bhosari Police Station, for the alleged offences punishable under Sections 302, 324, 143, 144, 147, 148, 149 of the Indian Penal Code; under Section 4(25) of the Arms Act and Section 37(1)(3) r/w Section 135 of the Maharashtra Police Act.
3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the aforesaid case. He submits that the

applicant is no way concerned with the other accused nor did he have any motive to cause Alvin's death. He submits that the other co-accused had used the applicant to enter the house. He submits that a perusal of the complaint/FIR will also show that the applicant had neither assaulted Alvin nor the complainant or her mother and that he was only standing at the spot. He submits that the applicant had soon after his arrest submitted an application before the learned Magistrate stating therein, that he was used by the co-accused to have the door opened at knife point, after which the other co-accused entered the house and assaulted the deceased, complainant and complainant's mother. He submits that the applicant himself after the incident had dialled '100' number and informed the police of the said incident. He submits that if the applicant had participated in the said crime, he would not have made such a phone call. He further submits that the applicant has no antecedents.

4. Learned APP opposed the application.

5. Perused the papers. There are eye-witnesses to the alleged incident of assault i.e. the complainant – Clara (aunt of deceased-Alvin) and her mother. According to the complainant, the incident took place on 30th December, 2018 at about 2.00 a.m. when they were sleeping in the

house. She has stated that about 2.00 a.m. somebody knocked the door, pursuant to which, she asked as to who was knocking the door. She has stated that the person replied that he was Sunny (Applicant) and whether Alvin was at home and that he had some important work and that she should open the door. She has stated that although she stated that Alvin was not at home, the accused continued to knock the door and when she opened the door, Abhishek, Rupesh, Rahul, Nikhil and the applicant forcefully entered the house. She has stated that Abhishek and Rupesh assaulted Alvin with a koyta and that Rahul assaulted Alvin with a cement block and Nikhil with stones. She has stated that the applicant was standing at the spot. She has stated that when she and her mother started shouting for help Abhishek assaulted her and her mother with koyta, pursuant to which, they both sustained injuries on their hand. She has stated that when she ran for help, all the accused fled from the spot. *Prima facie*, no overt act of assault has been attributed to the applicant nor he is alleged to have been holding any weapon or exhorted/instigated the co-accused to assault Alvin. As far as the submission of the learned counsel for the applicant, that the applicant was forcibly taken by the co-accused to Alvin's house at knife point and was made to talk to the complainant, asking her to open the door or that he dialled '100' number and informed the police, the same is his defence and will be decided by the trial Court at the time of the trial.

Prima facie, it appears that the applicant had no motive to assault Alvin nor is there any material on record to show the applicant's association with the co-accused. There is no recovery of any weapon or clothes as against the applicant. No overt act is attributed to the applicant as far as assault on Alvin or others is concerned. Learned APP has not been able to show any motive for the applicant to assault the deceased. Learned APP does not dispute the fact, that the applicant has no antecedents. The applicant was aged 20 years at the time of the incident. Investigation is complete and charge-sheet is filed. Hence, in the facts further detention of the applicant is not warranted.

6. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

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

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. 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.

9. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.