

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

BAIL APPLICATION NO.767 OF 2021

Wrapper / Abdul Samir Nasir Shaikh Applicant

Versus

The State of Maharashtra Respondent

Mr.N. M. Nadar i/b. K.A.J. Merchant for the Applicant.

Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE : 3rd FEBRUARY, 2022

(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R. No.226/2018, registered at Shivaji Park Police Station, Mumbai. Initially, the offence was registered under Section 307 read with 34 of the Indian Penal Code. However, subsequently, Section 302 of the Indian Penal Code was added.

2. The FIR was lodged by one Jyoti Thakur. She has stated that on 18th October, 2018, they were going to Dadar Chowpaty for immersion of Idol at about 1.00 am in the midnight. Their procession reached to sea shore in Dadar. The boys from their Mandal and others took down the Idol from Tempo. They were carrying it

towards the water. At that time, there were some boys standing in way, they were asked to move aside. But there were quarels. After that those boys went away from the spot. At about 1.30 am, the informant and others were returning back, at that time, the same boys, who had quarelled earlier came in front of them. One of them suddenly took up an empty liquor bottel lying nearby and broke it on stone and gave a blow on Jagdish on his right side of neck. There was heavy bleeding. The informant and others started shouting. The police officer who was present there, caught one of them. His name was mentioned as Avinash Ashok Nalawade. The police made enquiry with Avinash, at that time the informant came to know that the name of the assailant was Wrapper @ Samir Nasir Shaikh who had given fatal blow. The injured was removed to the hospital. On this basis, the FIR is lodged.

3. Subsequently, the injured succumbed to his injuries, and therefore, Section 302 of the Indian Penal Code was added.

4. The learned counsel for the Applicant submitted that the statement made to the police by the co-accused is hit by Section 26 of the Indian Evidence Act. The identification of the Applicant is not admissible in law. Identification is doubtful. He further submitted

that except the first informant no one else was asked to attend the identification parade.

5. The learned APP submitted that the blood stained clothes were recovered at the instant of the Applicant and C.A. report shows that the clothes were having human blood. She submitted that there are eye witnesses to the incident. She submitted that there are two antecedents against the applicant and therefore, bail should not be granted.

6. I have considered these submissions. Apart from the first informant Jyoti Thakur, there are statements of other eye witnesses, namely, Vidya Padyal, Ragini Satardekar, Ajay Satardekar, Chhabubai Adagale and Kavita Bhagat. These statements are consistent. Significantly, nobody was knowing the present Applicant and only descriptions of those boys were given. All the statements show that the co-accused has named the Applicant in the presence of the police on enquiry made by the police. Therefore, there is substance in the submission made by the learned counsel for the Applicant. Such confession is not admissible as per Section 26 of the Indian Evidence Act. In the present case, there is no reliable material against the present Applicant. The informant had identified the Applicant in the

identification parade held on 30th November, 2018. The supplementary statement of the informant was recorded on 23rd October, 2018 which shows that on that date, the informant was called at the police station. She was shown the arrested accused including the present Applicant and at that time also she claimed to have identified the Applicant. Thus, the entire procedure of identification parade is vitiated because the Applicant was already shown to the informant much earlier.

7. As far as recovery of blood stained clothes are concerned, the C.A. report does not show that the blood stained on the clothes were of the blood stains of the deceased. Therefore, even that circumstance is not a conclusive piece of evidence against the Applicant. The Applicant was arrested on 19th November, 2018. The investigation is over. The chargesheet is already filed.

8. Considering all these aspects, the case against the Applicant is extremely weak and he cannot be denied relief of bail. He deserves to be released on bail.

9. Hence the following order :

ORDER

- (i) In connection with C.R. No.226/2018, registered with Shivaji Park Police Station, Mumbai, for the offences

punishable under Section 302 r/w Section 34 of the Indian Penal Code, the Applicant is directed to be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) The applicant shall attend the concerned Police station once in a month till conclusion of the trial.
- (iii) Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)