

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1038 OF 2022

Vishwajit @ Ashwin Mohan Bramhane] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Sudeep Pasbola a/w Sumit Shinde, Aadhesh Konde-deshmukh, and Sachin Mishra i/b Ayush Pasbola for the Applicant.

Mr.S.V. Gavand, APP for the State.

PSI D.T. Amruskar, Bhandup Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 17th OCTOBER, 2022.

P.C.

1] The Applicant came to be arrested on 03.03.2021 in CR No.52/2021 registered with Bhandup Police Station alongwith three other persons and is charged for the offence under Section 302 read with 34 of the Indian Penal Code.

The Applicant seeks his release on bail on the ground that investigation is now complete and material in the charge-sheet is has clearly surfaced on record.

2] The learned counsel for the Applicant would submit that in the wake of query answered by the Medical Officer Rajawadi Post-Mortem Centre, who had conducted postmortem on the dead body of the deceased, certified that the injuries sustained by the deceased and mentioned in Column No.17 of the Post-Mortem report can be caused

by a weapon by knife, which came to be seized from accused Pravin Wankhede.

3] With the able assistance of the respective counsel, I have perused the charge-sheet placed on record.

The complainant Kushal Pawar has reported to the Police Station stating that he was in love with the the sister of accused No.1. But their association was disapproved by the two families, and since six years the Applicant got married to some other girl and even the sister of Accused No.1 was also married. But this incident was always a point of friction between two families.

Referring to the incident dated 02.03.2021, the complainant has stated that he met his brother Samir and when they were proceeding on their motorcycle to their house, Samir directed him to go home and he would follow him as he was interested in smoking. When the complainant started proceeding towards his house, he heard shrieks from his brother and when he returned to the spot, he noticed Pravin assaulting his brother with knife on his neck and the present Applicant who was holding the iron rod was also seen assaulting his brother. The two other co-accused were assaulting him with fist blows. On raising hue and cry for help, the bystanders came to the spot and his brother was rescued, but he succumbed to the injuries.

4] The inquest panchanama specifically note the injuries and the postmortem report in Column No.17 refers to 7 injuries. The fourth injury refers to stab injury placed over left side of neck and on dissection it was revealed that neck muscles, trachea, esophagus and common carotid artery were cut. The cause of death is recorded as "Haemorrhage and shock due to stab injury over neck".

5] A knife came to be recovered at the instance of Accused No.1 by drawing discovery panchanama. The knife was seized and it was forwarded to the Doctor who performed the postmortem, with a specific query, as to whether those injuries could be caused by the weapon which was seized.

The Medical Officer responded to the query of the Investigating Officer on 09.03.2021 and opined that the injury Nos. 1 to 7 mentioned in Column No.17 of post-mortem examination report, present over body of deceased can be possible by such kind of a weapon and these injuries with their internal damage are sufficient in ordinary course of nature to cause death of a person.

6] Undisputedly, the presence of the Applicant on the spot is not disputed as other witnesses are speaking in sync with the complainant.

It has surfaced on record through the charge-sheet that the Applicant is also one of the assailant, who assaulted by means of a rod. However, the injuries which are responsible for causing death of the deceased, as per the postmortem report, are the one caused by a knife, which came to be discovered at the instance of Accused No.1.

The present Applicant will take consequences of his act on being charged with Section 34 of the IPC, but on the investigation being complete, he need not be further incarcerated. In absence of antecedents attributed to him, he deserve to be released on bail, subject certain conditions.

7] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Vishwajit @ Ashwin Mohan Bramhane shall be released on bail in Sessions Case No.515/2021 arising out of C.R.No.52/2021 registered at Bhandup Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station as and when called for.
- (d) 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 and should not tamper with evidence.
- (e) The Applicant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]