

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2258 OF 2021

Nikhil Mohan Seth	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr. Satyavrat Joshi, for the Applicant.
Ms. M. R. Tidke, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
DATE : 28 FEBRUARY 2022

P.C.

1. By this Application, the Applicant (Accused No.5), is seeking regular bail. The Applicant alongwith others has been chargesheeted, for the offence punishable under Section 302, 324, 143, 144, 147, 148, 149 of IPC and Section 4/25 of the Indian Arms Act and Section 37(1)(3) r/w. Section 135 of the Maharashtra Police Act arising out of Crime No. 816/2018 of Police Station Bhosari, Pune.

2. The incident in question is alleged to have happened at about 2.00 a.m. on 30 December 2018. Ms. Clara Kitto who is the aunt of

the deceased Alwyn Ravi Rajgopal, is the first informant. She states that in the night, at about 2.00 a.m. Accused Abhishek Chavan, Rupesh Sankpal, Rahul Veer @ Pappya, Nikhil Sheth and one Sunny Gajbhiv had trespassed into her house and assaulted Alwyn by means of Koyta. Alwyn tried to flee to save himself when the assailants followed him and he was further assaulted on account of which Alwyn died. On the basis of the complaint lodged by Smt. Clara Kitto, offence came to be registered and after investigation, the chargesheet is filed.

3. I have heard the learned counsel for the Applicant and the learned APP. Perused record.

4. The learned counsel for the Applicant submitted that although the Applicant is named in the FIR, the allegation in the FIR as well as of the eye witnesses is that the Applicant has assaulted the deceased with a stone. The learned counsel has pointed out that the Post Mortem report does not show any contused lacerated wound (CLW). It is submitted that all the injuries sustained by the deceased are chop wounds or incised wound which cannot be said to be referable to an assault by a stone. It is submitted that there is no recovery of any other incriminating article such as blood stained clothes from the Applicant and the co-accused Sunny Gajbhiv and Dinesh Kote have been released on bail.

5. Learned APP submitted that the Applicant is named in the FIR and by the eye witnesses Mr. Sannu Robert Kitto who is son of the first informant Clara Kitto. It is submitted that the deceased was chased and brutally assaulted resulting into as many as 64 injuries. She pointed out that the stone is recovered from the spot.

6. I have considered the circumstances and the submissions made.

7. Although, the claim of parity with the co-accused neither arises nor claimed. However, *prima facie*, it appears that according to the prosecution the Applicant had assaulted the deceased by means of a stone which has been recovered from the spot. A perusal of the Post Mortem report does not show any injury in the nature of CLW which may be referable to an assault by a stone. There is no recovery of any other incriminating article from the Applicant shown from the record. It is in this regard that in the submission of the learned counsel for the Applicant has to be appreciated that the if there is an assault by the Applicant who was allegedly present on the spot and had taken part in the assault, he cannot escape having any blood stains on his clothes. The letter dated 30 January 2019 which is a covering letter addressed to the CFSL Pune does not show that the clothes of the present Applicant having sent for report of the

Chemical Analyser. The investigation is complete and the chargesheet is filed.

8. In such circumstances, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Nikhil Mohan Seth, be enlarged on bail, on executing a PR Bond in the sum of Rs. 20,000/- with one or two solvent sureties in the like amount.
- (iii) 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.
- (iv) 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.
- (v) The Applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

(vi) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(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.

(viii) The application is allowed in the aforesaid terms and is accordingly disposed of.

(ix) It is made clear that the observations made herein are *prima facie* in nature, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

C.V. BHADANG, J.