

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1055 OF 2020

Rajan Sharwan Udare	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr. Shaibaz Khokhara, for the Applicant.
Mr. Y. Y. Dabke, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
DATE : 27 JANUARY 2022
(Through Video Conferencing)

P.C.

. By this Application, the Applicant (Accused No.2) is seeking bail. The Applicant alongwith Satish Namdev Khutle (Accused No.1) has been chargesheeted for the offence punishable under Section 302, 449 and 506 (II) r/w. 34 of IPC.

2. The prosecution case, as disclosed from the complaint lodged by Sarita alias Vasanti Shyam Mukadam is that, on 10 October 2017, at about 12.45 p.m., the informant had heard shouts from the house of her cousin brother Madhukar Ramdas Khutle. The informant therefore rushed to the house of Madhukar, when one person on

seeing her, had closed the door of the house. When the first informant peeped through the window, she found that Sitabai Khutle (since deceased) who is the mother of Madhukar Khutle and Sau. Aparna, wife of Madhukar Khutle were lying in a pool of blood with injuries to their neck by sharp weapon. According to the first informant, she had noticed two persons in the house who fled from the rear door. She had given description of the two persons. After the informant raised shouts, the neighbours and villagers gathered and the police were informed. On the basis of the complaint lodged on 10 October 2017, the offence came to be registered and after investigation, the chargesheet is filed. The supplementary statement of Sarita Mukadam was recorded on 11 October 2017.

3. According to the prosecution, Ramdas Khutle had allegedly committed encroachment over the land of Namdev Khutle, the father of Accused No.1 and on account of said annoyance, he committed the murder of Sitabai Khutle and Aparna Khutle with the help of the present Applicant who is maternal cousin brother of the Accused No.1.

4. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

5. The learned counsel for the Applicant submitted that the Applicant is seeking bail both on merits and on medical ground. It is submitted that the Applicant is arrested out of suspicion and there is no evidence direct or otherwise to show the involvement of the Applicant in the said offence. The learned counsel has taken me through the statement of the witnesses in order to point out that the statements of Aarti Khutle, Shweta Khutle and Dharma Khutle are recorded on 12 October 2017 and thereafter i.e. after the arrest of the present Applicant who was arrested on 11 October 2017. He submitted that the Applicant is suffering from Seizures and had developed convulsions during the court proceedings and the condition of the Applicant is deteriorating and he be released on bail.

6. Learned APP submitted that the trial has commenced. He submitted that there is evidence to show that the Applicant has assisted the Accused No.1 in the incident although, there is no recovery of any weapon or other incriminating material from the Applicant.

7. I have carefully considered the circumstances and the submissions made.

8. *Prima facie*, it appears that the motive according to the prosecution is that the Accused No.1 was annoyed on account of the alleged encroachment made by Ramdas Khutle who is the husband of Sitabai and father-in-law of Aparna Khutle. At least, *prima facie*, it appears that there is no direct motive which is attributed to the Applicant. There is no eye witness account of the incident on record. According to the prosecution, the present Applicant had dropped the knife on the spot and it was recovered during the spot panchanama. Thus, there is no recovery of the weapon either from the person of the Applicant or at his instance under Section 27 of the Evidence Act. I have also gone through the statement of the witnesses which are recorded after the arrest of the present Applicant. Even the alleged extra judicial confession made before Manasi Udare and Swati Gaikwad is not of the present Applicant.

9. Learned counsel for the Applicant, on instructions, states that the Applicant shall not dispute his identification before the Court in the event exemption from appearance is sought and granted so that the trial is not held up.

10. Coming to the medical ground, a report was called from the Superintendent of Talaja Central Prison where the Applicant is presently lodged. The Chief Medical Officer (CMO), Talaja Central Prison has reported that the Applicant is suffering from 'Seizure

Disorder with Breakthrough Seizures.’ The Applicant was treated in Sir J. J. Hospital where his 2-D Echo was done. The report also shows that the Applicant had developed convulsions during the court proceedings. In so far as the present health status is concerned, the CMO has reported thus-

“At present the general health status of the prisoner is deteriorating day by day for which symptomatic and conservative treatment provided regularly by monitoring vital parameters as advised by Physician SDH Panvel and Physician, Psychiatrist & Neurosurgeon Sir. J. J. Group of Hospital.”

11. Considering the over all circumstances and the nature of the prosecution evidence and the medical condition of the Applicant, I find that the Applicant deserves to be released on bail on conditions. Hence, the order.

ORDER

- (i) The Applicant be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall attend the learned Sessions Court on the dates of the trial, unless exempted.
- (iii) The Applicant shall not directly or indirectly make any attempt to contact or to influence or to otherwise tamper with the prosecution evidence / witnesses.

(iv) Bail before the learned Sessions Court.

C.V. BHADANG, J.