

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

CRIMINAL BAIL APPLICATION NO.1549 OF 2020

Santosh Ladkya Katele

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Milan A. Desai i/b. T. R. Patel, Advocate for Applicant.
- Mr.P H. Gaikwad, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st JANUARY 2022

(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.702/2017, dated 27/12/2017, registered with Goregaon Police Station, Mumbai, under sections 307 of the Indian Penal Code. Subsequently the offence was converted to section 302 of the Indian Penal Code. The Applicant was arrested on 27/12/2017 and since then he is in custody.

2. Heard Mr.Milan A. Desai, learned counsel for the Applicant and Mr.P. H. Gaikwad, learned APP for the State.
3. The prosecution case starts with the FIR lodged by one Vijay Laxman Barat, who was resident of building No.3 of B-wing of Adivasi Society, Goregaon. He has stated that at about 10.00 a.m. in the morning he was sitting in the society with his friend. Suddenly they saw smoke and flames coming from building B-wing. All of them rushed there. They saw that the resident Sunil Bhiva Katele who was staying there was engulfed by fire. They saw that the present Applicant who was Sunil's cousin was pouring an inflammable substance on him. As the informant and others reached there, the Applicant tried to run away from there. Some of the persons tried to apprehend him, but he escaped. The residents tried to extinguish the fire. The police were called and the injured Sunil was removed to hospital. He succumbed to his injuries. He had suffered 87% burns. On these allegations, the FIR was lodged in the morning when the deceased was still alive and therefore initially offence under section 307 was lodged.

4. Learned counsel for the Applicant submitted that though there are three alleged eyewitnesses, there are contradictions between their versions. No inflammable substance was found inside the room and therefore there is nothing to support the prosecution theory that the Applicant had thrown some inflammable substance inside the room. He submitted that the Applicant is in custody since December 2017 and trial has not started. Therefore bail be granted.

5. Learned APP opposed this application. He submitted that the deceased was handicapped and he was not able to walk. His both legs were not functioning. Thus he was a helpless person who could not rescue himself. There are statements in the charge-sheet to show that there was dispute between the deceased and the Applicant and therefore one of the relatives was staying with the deceased. He used to lock the room from outside while going out for protection of the deceased. The Applicant took advantage of the situation and committed the crime.

6. I have considered these submissions. I have perused the charge-sheet, which is annexed to this application.
7. The FIR is lodged by one Vijay Barat, who has seen the incident. Apart from him, there is statement of witness Ravindra Gosavi, who has stated that the Applicant was present there and he tried to run away from the spot. He was caught by this witness, but since the primary concern was to save Sunil; this witness and others tried to save Sunil. In the meantime, the Applicant ran away from the spot. There is statement of one Amit Prakash Gangde. He had seen the Applicant running away from the spot. He stopped the Applicant. The Applicant's hands were smelling of petrol and he pushed this witness and ran away. This witness has stated that the deceased was saying that the Applicant had set him on fire. Even the other witness has stated that the deceased was saying that the Applicant had set him on fire.
8. Apart from that there is written dying declaration, wherein also the deceased had clearly stated that the Applicant

had poured petrol on him and had set him on fire. Apart from this evidence, there is statement of Ajay Davade, who used to reside with the deceased. He has stated that there was a dispute between the Applicant and the deceased and the incident was result of that. He had locked the room from outside in the morning. The Applicant took advantage of the situation and also of the helpless physical state of the deceased and thus committed this offence.

9. There is sufficient material against the Applicant. The contradictions as submitted by learned counsel for the Applicant do not really go to the root of the case. In this view of the matter, no case for grant of bail is made out. The application is rejected. However, the Applicant is in custody since December 2017. Therefore the learned trial judge shall take steps to take up this matter expeditiously keeping in mind other pending matters before him awaiting trial.

(SARANG V. KOTWAL, J.)