

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

BAIL APPLICATION NO.1691 OF 2020

Rizwan Majharali Ansari

...Applicant

Vs

The State of Maharashtra

...Respondent

...

Mr. Salman Khan for the Applicant.

Smt. Sharmila Kaushik, APP for the Respondent-State.

PI Nitin Patil attached to Bhiwandi City Police Station present.

CORAM : SANDEEP K. SHINDE J.

DATE : APRIL 5, 2022.

P.C. :

Applicant seeks his enlargement on bail in connection with the Crime No.I-402 of 2018 registered at Bhiwandi City Police Station, Bhiwandi for the offences punishable under Sections 302, 327 r/w Section 34 of the Indian Penal Code, 1860.

2 Complainant, Mohammed Shahrukh, eye witness alleged that on 26th November, 2018 at 5 a.m., applicant dealt repeated blows of weapon on the abdomen of the deceased Amir Jamir Khan. Whereafter, when Amir was fleeing the spot, applicant again

assaulted him on his chest. After which complainant removed, Amir (Deceased) to the Civil Hospital. On admission, he was declared dead. Complainant reported the incident to the police at 17.15 hours of 26th November, 2018 whereupon crime in question came to be registered against the applicant and his brother under Section 302 of the Indian Penal Code, 1860. Applicant was arrested on 29th November, 2018. In the course of the investigation on 11th December, 2018, weapon, i.e., scissor was recovered at the instance of the applicant. Final report has been filed after investigation. On 23rd January, 2020, this Court granted bail to the co-accused, brother of the applicant, however, declined the bail to the applicant. Therefore, this is second bail application.

3 Learned counsel for the applicant submitted that the applicant has been falsely implicated. He is in custody since November, 2018. Trial is not likely to conclude in near future. Applicant has no criminal antecedents. He is permanent resident of Bhiwandi City and by imposing suitable conditions, his presence for trial can be secured. Learned counsel for the applicant has taken me

through the charge-sheet to submit that the case against the applicant is not definite.

4 On the other hand, the learned Prosecutor relied on the statements of eye witnesses. She contended that apparently, there is no reason to disbelieve their statements including the statement of complainant under Section 164 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) . The learned Prosecutor further submitted that since offence is serious in nature, punishable with life imprisonment or death, application deserves no consideration.

5 True that offence is serious and punishable with life or death. Station diary (entry no.14969) produced before me, reveals, the incident was reported by the complainant at 5.15 a.m. Although the complainant was eye witness, it is not known, why he did not disclose names of the assailants to police at 5.15 a.m. Any way, complainant removed injured to the hospital where he was declared dead on admission. Post-mortem examination was done. Autopsy surgeon reported cause of death was due to '*hemorrhagic shock due*

to injury to heart by hard and sharp object'. Although, the complainant in a complaint and thereafter in his statement under Section 164 of the Cr.P.C. stated that applicant inflicted eleven blows on the abdomen of the deceased, yet, post-mortem report, column no.21, reveals walls of abdomen were intact. It is apparent from column no.17 of the post-mortem report that the deceased had suffered stab injury over his chest. Therefore, the report, prima-facie, renders the statement of the complainant recorded under Section 164 of the Cr.P.C. indefinite. Be that as it may, in column no.5 of the post-mortem report, Dr. has made an endorsement to the effect;

“As per inquest, alleged history of assault by two known persons on 26th November, 2018 at 5 p.m. by hard and sharp object”

6 This endorsement was based on MLC No.14669 done at hospital. Obviously, MLC at hospital was prepared on the admission of the deceased in the morning of 26th November, 2018. Prosecution has produced medico-legal case-papers, which show, deceased was assaulted by two known persons on 26th November, 2018. It is not known, who had disclosed this fact to Doctor or scribe of MLC. Thus, it is obvious that the scribe of MLC knew the names of the

assailants. However, prosecution could not explain the source of this information. In any case, the material on record suggests, particulars of the assailants were either known to Doctor or scribe of the MLC. Yet, this fact was not reported to the police. This aspect of the matter is required to be appreciated on the back-ground of the fact that even though complainant had witnessed the alleged incident and reported it to the police at 5 a.m. but did not disclose the names of the assailants. There is one more fact needs to be stated. It is prosecution's case that before the alleged incident, deceased Amir had beaten Saddam Baila. Whereafter, Saddam Baila alongwith Amir (Deceased) and others had been to, Mangal Bazar to mount attack on the applicant. In the course of which, it was alleged that the applicant assaulted the deceased. In the fact situation of the case, prosecution ought to have recorded statement of Saddam Baila. However, for whatever reason, his statement has not been recorded. Therefore, except a complaint and statement under Section 164 of the Cr.P.C., there is no other material brought on record and/or pointed out to me. Even otherwise statement of complainant under Section 164 of the Cr.P.C., on the face of it, was his exaggerated version.

Thus, taking overview of the facts of the case, in my view, a case is made out for granting bail by imposing the conditions, as to secure the presence of the applicant for the trial. Thus, following order;

ORDER

(i) The applicant in Crime No.I-402 of 2018 registered with Bhiwandi City Police Station, Bhiwandi shall be released on executing PR bond for the sum of Rs.50,000/- with one or more sureties in like sum.

(ii) The applicant shall attend the concerned police station twice a month, i.e., 2nd and 4th Monday of every month between 11 a.m. to 1 noon commencing from May, 2022.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within two weeks from the date of his release on bail.

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

7 The application is accordingly allowed and disposed of.

8 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)