

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

CRIMINAL BAIL APPLICATION NO. 3401 OF 2021

Dnyanesh Sunil Thorat

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Aniket U. Nikam a/w. Mr. Piyush Toshnival a/w. Mr. Amit Icham i/b. Mr. Vivek N. Arote, for the Applicant.

Ms. M. R. Tidke, APP for the Respondent/State.

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**CORAM : C.V. BHADANG, J.
DATE : 22 MARCH 2022**

P.C.

. By this Application, the Applicant (Accused No.3) is seeking release on bail in Crime No. 206/2020 of Police Station Chinchwad, Pune, under Section 302 r/w. 34 of IPC. The Applicant alongwith co-accused Ajay Kshirsagar (Accused No.1) and Swapnil Kapure (Accused No.2) has been chargesheeted for the offence punishable under Section 302 r/w. 34 of IPC for having intentionally caused the death of Shubham Sathe on 30 August 2020 after 8.00 p.m. in a shed near Oriental Society at Chinchwadgaon, Pune.

2. According to the prosecution, the Applicant, the deceased and the co-accused were friends and had gone to the shed for a party. They had carried liquor and eatables. After drinking liquor, there was a quarrel between the deceased and the co-accused Swapnil in which the deceased was assaulted by means of a wash basin and the tiles lying on the spot, resulting into head injury to the deceased to which he succumbed.

3. In this case, the crime was registered on the basis of the complaint dated 31 August 2020 lodged by the father of the deceased and after investigation, the chargesheet is filed.

4. I have heard the learned counsel for the parties. Perused record.

5. The case is based on circumstantial evidence as there is no eye witness account of the incident of assault available on record. In so far as the present Applicant is concerned, the prosecution has relied upon three circumstances namely (i) the deceased being seen in the company of the Applicant at about 7.15 p.m. on the date of the incident which is in the nature of a last seen together theory (ii) an extra judicial confession of the co-accused Ajay Kshirsagar and (iii) the recovery of blood stained clothes from the Applicant on 31 August 2020 at about 3.13 p.m. i.e. at the time of his arrest.

6. With the assistance of the learned counsel for the parties, I have gone through the record, in the context of these three circumstances. A perusal of the statement of Laxman Sathe, who is grandfather of the deceased shows that the co-accused Swapnil had gone to the house of the deceased at about 6.45 p.m. on 30 August 2020 and the deceased informed the witness Laxman Sathe that he (Shubham) alongwith Applicant and the co-accused Ajay and Swapnil were going to see the Ganapati idols. Thus, Laxman Sathe does not claim to have seen the Applicant in the company of the deceased. There is a statement of Yunus Pathan which also shows that it was the co-accused Swapnil who was riding as a pillion rider on the motorcycle of the deceased while Accused No.1 Ajay Kshirsagar and the present Applicant were together on another motorcycle. Subsequent to this, at 8.00 p.m. it is only the Applicant and the Swapnil were seen collecting the food from a restaurant.

7. Apart from this, there is evidence of recovery of clothes which are stated to be blood stained in respect of which the Chemical Analyser's report is awaited. Lastly, there is a confessional statement of co-accused Ajay Kshirsagar made to Aniket Padule. The learned counsel for the Applicant submitted that the extra judicial confession is a weak piece of evidence and further loses any probative value when used against the coaccused. *Prima facie*, it can be seen that the extra judicial confession is by the co-accused and not by the present Applicant.

The Applicant was arrested on 31 August 2020 and since then, he is in custody. The investigation is complete and the chargesheet is filed.

8. In such circumstances, I do not find any justification to detain the Applicant behind the bars pending trial. Hence, the following order.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant Dnyanesh Sunil Thorat, be released on bail in Crime No.206/2020 of Police Station Chinchwad, Pune, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.
- (iii) The Applicant shall undertake to remain present before the learned Sessions Judge during the course of trial, unless exempted.
- (iv) The Applicant shall not directly or indirectly make any attempt to tamper with the prosecution evidence or witnesses.
- (v) Bail bonds to be furnished before the learned Sessions Judge.

(C.V. BHADANG, J.)