

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3670 OF 2021

Anand @ Mukesh Bhagwan Late ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr. Sidheshwar Biradar for the Applicant.

Mr. R.M.Pethe, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 10 FEBRUARY 2022
(Through Video Conferencing)

P.C.

1. By this application, the Applicant is seeking bail. The Applicant alongwith co-accused, has been chargesheeted for the offence punishable under Section 302, 307, 143, 144, 146, 148, 149 of the IPC and Section 4(25) of the Arms Act and Section 37(1) and 135 of the Maharashtra Police Act, arising out of Crime No. 760 of 2021 of Police Station Wanvadi, District Pune.

2. The aforesaid crime was registered on the basis of the complaint lodged by Nishant Nanaware dated 24.07.2020. The deceased Paitarsing Tak was released from Yerwada Jail on 22.07.2020 and the following day i.e. on 23.07.2020 in the night

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at about 10.00 pm, he is alleged to have been murdered by the Applicant and the co-accused. According to the prosecution, the intention behind the offence was a long standing enmity between the deceased and the co-accused Vickysing Kalyani. The record discloses that the prosecution has filed a chargesheet and subsequently, Second supplementary chargesheet against the co-accused.

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 the prosecution witnesses Nishant Nanaware and the mother of the deceased namely Dangakaur Tak have not named the present Applicant. It is submitted that the statement of Nishant Nanaware was recorded on 24.07.2020. The statement of Dangakaur Tak was recorded on 30.07.2020 and the supplementary statement recorded on 08.08.2020 and in none of the statements, they have mentioned about the presence of the Applicant or have attributed any overt act to him. The learned counsel for the Applicant submitted that the Applicant has only been named by the prosecution witnesses Nagesh Ghodake, Faizan Ansari and Farhan Shaikh. It is pointed out that the statement of Nagesh Ghodake was recorded on 31.07.2020 while that of Faizan Ansari was recorded on 17.08.2020. These statements are recorded belatedly. It is submitted that the

Investigating Officer has initially filed a final summary report under Section 169 of the Cr.P.C. thereby exonerating the co-accused Hukamsing Kalyani, Makkhansing Kalyani, Ravising Kalyani and Vickysing Kalyani. However, subsequently they have also been arrested as accused. It is submitted by the learned counsel for the Applicant that the prosecution is coming up with two different versions, which are contrary to each other. It is submitted that there is no recovery of any weapon or other incriminating articles from the Applicant except his clothes which are not found to be having any blood stains of the blood group of the deceased. It is submitted that the Applicant is not having any criminal antecedents. He is young boy of 23 years when he was arrested. He was arrested on 26.07.2020 and since then, he is in custody.

5. The learned APP has submitted that there are three prosecution witnesses namely Nagesh Ghodke, Faizan Ansari and Farhan Shaikh who have named the Applicant and this is not the stage for detailed appreciation of the evidence on record. It is submitted that statement of Farhan is recorded immediately on 25.07.2020. He pointed out that Nagesh Ghodke is the injured witness and looking to the nature of the offence in which the deceased was brutally assaulted and was found to be having 34 external injuries on his person, no case for grant of bail is made out.

6. I have considered the submissions made. It is true that the witnesses Nishant Nanaware and Dangakaur Tak, who is the mother of the deceased have not named the Applicant. However, prima facie at this stage, it can be seen that the prosecution witnesses Nagesh Ghodke, Faizan Ansari and Farhan Shaikh have named the present Applicant. Out of these witnesses, Nagesh is an injured eye witness and therefore, prima facie his evidence would carry greater probative value. A perusal of the statement of Nagesh shows that when he tried to intervene in the assault, it was the present Applicant who asked co-accused Vicky Mahadule to assault the witness Nagesh. Prima facie, the said story is found supported from the injury report of Nagesh Ghodke. This is not the stage where the prosecution evidence can be examined and appreciated in details. The Applicant is chargesheeted for a capital offence and considering the statement of witness Nagesh, who is an injured eye witness, I do not find that a case for grant of bail is made out.

7. The criminal application is accordingly rejected.

8. The trial of the case is hereby expedited.

(C.V. BHADANG, J.)

(This order is corrected as per speaking to minutes of order dated 24.02.2022)