

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3586 OF 2021

Dinesh Vittal Kote ..Applicant
Vs.
The Senior Inspector of Police and Anr. ..Respondents

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

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CORAM : C.V. BHADANG, J.
DATE : 1 FEBRUARY 2022
(Through Video Conferencing)

P.C.

. By this Application, the Applicant (Accused No.6), is seeking regular bail. The Applicant alongwith others has been chargesheeted, for the offence punishable under Section 302, 324, 143, 144, 147, 148, 149 of IPC and Section 4/25 of the Indian Arms Act and Section 37(1)(3) r/w. Section 135 of the Maharashtra Police Act arising out of Crime No. 816/2018 of Police Station Bhosari, Pune.

2. The incident in question is alleged to have happened at about 2.00 a.m. on 30 December 2018. Ms. Clara Kitto who is the aunt of

the deceased Alwyn Ravi Rajgopal, is the first informant. She states that in the night, at about 2.00 a.m. Accused Abhishek Chavan, Rupesh Sankpal, Rahul Veer @ Pappya, Nikhil Sheth and one Sunny Gajbhiv had trespassed into her house and assaulted Alwyn by means of Koyta. Alwyn tried to flee to save himself when the assailants followed him and he was further assaulted on account of which Alwyn died. On the basis of the complaint lodged by Smt. Clara Kitto, offence came to be registered and after investigation, the chargesheet is filed.

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 Applicant has not been named in the FIR nor by any other witness in their statements recorded immediately after the incident. It is submitted that the Applicant has only been named in the supplementary statement by the informant Clara Kitto and her mother of the deceased Smt. Pushpa Rajgopal, recorded on 8 January 2019. It is submitted that the Applicant has no criminal antecedents to his discredit and according to the prosecution, there is only recovery of a Koyta on 6 May 2019 from a public place near cremation.

5. Learned APP submitted that in the supplementary statement, a specific role is attributed to the Applicant as he was armed with Koyta.

6. I have considered the submissions made. Although, the learned counsel for the Applicant has sought parity with the co-accused Sunny Gajbhiv, who has been released on bail by this Court by order dated 19 January 2021 in Criminal Bail Application No.3637/2019, there are some circumstances which are in the favour of Sunny Gajbhiv which are not there in the present case. Thus, the claim of parity cannot be accepted. However, the fact remains that the Applicant is not named in the FIR nor by the eye witnesses Pushpa and others in their initial statement. It is only in the supplementary statement recorded after more than a week, that name of the present Applicant for the first time has figured. According to the learned counsel for the Applicant, there are no criminal antecedents to the discredit of the Applicant. The Applicant was arrested on 2 May 2019 and there is a recovery of Koyta, *prima facie*, which is shown to be from a public place. The investigation is complete and the chargesheet is filed.

7. In such circumstances, the following order is passed.

ORDER

- (i) The Applicant be enlarged on bail, on executing a PR Bond in the sum of Rs. 20,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial.
- (iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.
- (iv) The Applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (v) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

(vii) The application is allowed in the aforesaid terms and is accordingly disposed of.

(viii) It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

C.V. BHADANG, J.