

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3935 OF 2021

Sandeep Uttam Jadhav	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Vinod Kashid for the Applicant.
 Smt. Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 18th JULY, 2022

P.C:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant face charge under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as IPC). Perusal of the charge-sheet would reveal that on the complaint being lodged by the mother of Aniket Bansode on 31.03.2021 informing that on the said night, he did not return home and in the morning hours of 23.30 he was lying outside the shop in an unconscious condition, FIR came to be registered. On careful examination, it was seen that he has sustained injury on his back and there were abrasions. Since he was not responding, he was taken to the Hospital, but was declared death. When the intimation was given to the Powai Police Station, she was informed that since her son was found, indulging in committing theft of iron rods at Milind Nagar Junction, the security guards of metro site had intercepted him and he was assaulted by means of iron rod, which caused his death.

3. The postmortem report placed on record refers to 23 contused

abrasions on different parts of body and the cause of death has been opined to be on account of multiple contusions. Column No.19 of the postmortem report refer to presence of under scalp hematoma at right frontal region, though there is no fracture on his head.

4. During the course of investigation, statements of several witnesses came to be recorded and they are all compiled in the charge-sheet.

The statement of Milind Bane recorded on 01.04.2021 refer to an incident which took place on 30.03.2021, when he reported as a Guard on duty and he received phone call from one Umesh Parab, informing that one boy was found on TP-II. After having his dinner, he alongwith one Sachin, another Guard went to the spot where the person, who was alleged to have stolen the goods, was being assaulted by Umesh, Sachin Sujat and Shubham and they were proceeding toward TP-II. At that time, the present applicant, the owner of S.J.Enterprises made a phone call to Umesh and they were asked to take the said person alongwith them. The boy was taken behind the bus stop, near IES School and he disclosed his name as Aniket.

It is further narrated by the said witness, the applicant slapped/hit him with great force, upon which he fell down. Thereafter, Sandeep made him to stand up and deceased was assaulted by the present applicant. Further narration is that, he was made to lie on the ground and the present applicant took a bamboo from the spot and started assaulting him on his body. The

other co-accused Umesh, assaulted by iron rod whereas Sujat assaulted by wooden bamboo and Sachin assaulted him by kicks and blows. He attempted to record the said incident in his mobile phone, but the applicant, stopped him.

5. When he attempted to intervene, he was told that if he interfere, he will loose his job. Thereafter one friend of Aniket came on the spot and helped him to stand up, but he was unable to do so, some how with the assistance of some persons, he left the spot.

6. On similar lines, is the statement of one Mandar Ambedkar, who also refer to the ferocious assault by the applicant alongwith Umesh, Sujat and Sachin by means of iron rod and wooden bamboo. The said incident was video-graphed and forwarded to the metro site security guard.

As far as the statement of Shubham is concerned, that he had witnessed the first incident of assault. He is not an eye-witness and he has reported about the same on the basis of hearsay. One Manish's statement is recorded, but he did not name the present applicant, but he states that Supervisor and Umesh assaulted Aniket. Salman Mohd. Shaikh only refer to that portion of incident where the deceased was taken to the present applicant. He has not witnessed the remaining part of the incident.

7. Learned counsel for the applicant vehemently submit that though there is panchnama prepared about the video recording, but it has not been placed alongwith the charge-sheet.

Learned APP do not deny the said submission that the mobile

phone was seized.

8. In the wake of the material compiled in the charge-sheet where there are eye-witnesses, who have been seen the applicant assaulting the deceased, which resulted in his death, whether the incident is recorded in video or not is not material. Ultimately, if the prosecution is able to prove the assault through these witnesses who have specifically assigned the role of the present applicant and since the CR also invoke Section 34 of the IPC, I do not think that the *prima facie* case is made out for releasing the applicant on bail.

9. Dealing with the submission that the case of the applicant would fall within exception I and IV of Section 300 of IPC, though this defence will be decided at trial, *prima facie* I am not satisfied that there was any grave provocation by the offender.

Apart from this, learned APP has invited my attention to the antecedents of the applicant under Section 302 read with 34 of the IPC in CR No.158/2021. Apart, there is also an offence u/s.304, 144 of IPC. There are other offences which invoke Section 323, 324, 504 & 506. One CR invoke Sections 537, 366 of the IPC, against him.

9. Considering the role attributed to the applicant in the charge-sheet, he do not deserve his release on bail.

10. The application is dismissed.

(SMT. BHARATI DANGRE, J.)