

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

BAIL APPLICATION NO. 661 OF 2022

Amir Sarfuddin Khan

..Applicant

v/s.

The State of Maharashtra .

..Respondent

Mr. Rizwan Merchant a/w. Adv. Faisal Shaikh, Adv. Devendra Kuber, Adv. Aasiya Khan for the Applicant.

Mr. S.V.Gavand, APP for the State.

PSI Kudmate from Chembur Police Station.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 3rd MAY, 2023.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Sessions Case No. 488 of 2021 pending on the file of the learned Sessions Judge, Gr. Mumbai. The said case arises from Crime No. 37 of 2021 registered at Chembur Police Station for offences under Section 302 r/w. 34 of the Indian Penal Code.

2. The case of the prosecution in brief is that on 08.02.2021 at about 8.30 p.m. near Ankur Garden the accused with their common intention inflicted injuries on the deceased Praful Savne, by means

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of knife and thereby caused his death.

3. Learned Counsel for the Applicant states that there is no material on record to show the involvement of the Applicant in commission of the crime. He submits that the prosecution has not conducted identification parade despite permission granted by the Court, this warrants drawing of adverse inference. He submits that there was considerable delay in recording the statement of Roshan Yetam and hence the circumstance of dying declaration cannot be believed. He further submits that the Applicants have not been identified by the witnesses. The Applicant is in custody since over two years and no further purpose will be served by detaining him further.

4. Learned APP submits that the Applicant has been identified by two witnesses. In addition the statement of Roshan Yetam also shows that the deceased had categorically stated that the Applicant was involved in inflicting injuries on him. He submits that the Applicant and the co-accused have inflicted several injuries and that the medical record clearly indicates that the death was caused due to shock due to stab injury to the chest and abdomen with multiple

injuries.

5. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

6. The statement of Vishwanath Bodke and Chetan Jadhav prima facie reveals that the Applicant was involved in inflicting injuries on the deceased with a knife. Both these witnesses have named the Applicant, and as such not holding identification parade would not be fatal as far as these witnesses are concerned.

7. The statement of Roshan Yetam also prima facie reveals that he had visited the victim while he was admitted in Sushrut Hospital. The material on record prima facie reveals that the deceased was conscious and he was stable while he was admitted in Sushrut Hospital. This witness has stated that the deceased had disclosed that the Applicant and the co-accused had inflicted injuries by means of knife. The post-mortem report also reveals that the victim has sustained 32 injuries in the form of incised wound, stab injuries, chop wounds, abrasion etc. The post mortem report states that the cause of death was shock due to stab injury to chest and

abdomen with multiple injuries. The record reveals that the deceased was murdered in a very brutal manner. The record reveals involvement of the Applicant in committing the crime. Under the circumstances, this is not a fit case to exercise discretion under Section 439 Cr.P.C. The application is dismissed.

(ANUJA PRABHUDESSAI, J.)