

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

BAIL APPLICATION NO.939 OF 2022

Sarvesh Nandlal Chaubey ..Applicant
VS.
The State of Maharashtra ..Respondent

Adv. Hare Krishna Mishra for the Applicant.
Ms. P. N. Dabholkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 21, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP.
- 2.** This is an application for bail by the accused no. 2 in respect of C.R.No. 272 of 2021 dated 29/07/2021 registered with APMC Police Station for the offence punishable under sections 302, 34 of the Indian Penal Code, 1860.
- 3.** Learned counsel for the applicant invited my attention to the order dated 04/05/2022 passed by learned Additional Sessions Judge, Thane granting bail to the co-accused

Vishal Ingale (accused no. 5). On the ground of parity, learned counsel submitted that even the applicant should be released on bail. For convenience, the order passed by the Additional Sessions Judge granting bail to Vishal Ingale is reproduced.

"2. Prosecution story in brief is as under:

On 29/07/2021 the complainant Promodini Virsen Jagtap lodged complaint to police station APMC. As per her complaint, the name of deceased is Sandeep @ Bala Dashrath Pawar. He was working with Vikram. Her niece Savita Vijay Jagtap informed her at night of 28/07/2021 that Sandeep is beaten by Vikram due to dispute regarding the misdeed committed by Sandeep. The complainant made phone call on the mobile of Sandeep but it was taken by his owner Vikram and he did not give information about Sandeep. Then on next day Sandeep was found as dead. The complainant raised doubt that Sandeep was killed by Vikram and his associates. On the basis of the same, above referred crime is registered.

3. On 29/07/2021 dead body of a person aged about 40 years was found lying in front of the shop by name Ambika Traders at Sector 19, Vashi and it was seen by Rajesh Thakkar and he informed the same to police. Then police came to spot and it was noticed that deceased had different injuries on head, hand, fingers, chest and legs. The dead body was sent for post mortem at Municipal Hospital, Vashi after preparation of inquest panchanama. Then on making inquiry regarding the name of deceased, his name was revealed as Sandeep @ Bala Pawar.

4. In due investigation, statement of different persons came to be recorded. It was revealed that Sandip was working in Bigo Packers and Movers Pvt. Ltd. Company. There was some dispute regarding some amount with Company owner Vikram Jangra and Promod Jangra. On 28/07/2021 Sandip was at the office of Vikram and he was assaulted by Vikram

and other two associates. This was noticed by a person Arun Thenbakshi, who provided tea to them. So, on the basis of the same, the names of accused persons were revealed as the persons involved in the incident of beating to Sandeep. After completion of investigation, charge-sheet came to be filed.

5. Applicants moved this application for bail on different grounds as mentioned in application.

6. I.O. and Ld. APP opposed application by filing say that the accused persons in collusion with each other committed murder of deceased. The applicants and other co-accused are seen in CCTV recording of the camera installed in the building where the incident of beating was happened. Though the name of accused is not in FIR, the involvement in the incident is proved. The identification parade of the applicant and co-accused Sarvesh is conducted on 29/09/2021 and they were identified by eye witnesses. The accused have no permanent place of residence. Other accused persons are yet to be arrested. The accused persons have taken away the mobile and identity card of deceased to suppress his identity. There is possibility of tampering and threatening witnesses. Accordingly, bail is opposed.

7. I heard the submissions of Ld. Counsel Shri K.P. Kotolikar and Ld. APP Smt. Morale for State.

8. Applicants' Counsel submitted that there is no evidence against the applicant and that all the witnesses are hearsay and that, there is no direct evidence against him. The only persons Vikram and Promod, the brothers are shown connected to the crime. The presence of applicant is not proved. Identification parade is shown conducted after long period. The name of accused is disclosed by co-accused persons and that cannot be considered as a good evidence. It is submitted that in absence of any direct evidence against the applicant, when there is nothing recovered from the applicant, when there is no direct connection of application with the incident, he be released on bail. The charge-sheet is already filed and investigation is already completed. Accordingly, he prayed for bail.

9. Ld. APP submitted that the incident is occurred in close place where there is no possibility of seeing the incident by other except persons present there. It is submitted that the person who provided tea has seen

the applicant/accused and there is identification parade. In memorandum panchanama, the co-accused have disclosed the name of applicant. Though there is no eye witness shown, who identified the applicant with name, his presence is brought on record through identification parade and through the statement of other persons. It is submitted that all the persons had common intention and therefore, each one is responsible for the act of others. Accordingly, bail is opposed.

10. So far as the incident is concerned, the victim/deceased was working with co-accused Promod and there was dispute occurred about certain business things. What can be granted from the statement of witnesses is that, injured/deceased was called by accused persons in their office where two persons were already present and the injured was beaten by the accused persons. So far as the place of incident is concerned, it is shown as office of co-accused Vikram. The CCTV recording is shown collected in which the accused persons are shown found going towards office. On count of dispute regarding business terms, about some articles and amount. It is alleged that the accused persons beat the injured-victim. Then he was taken out of office and left him lying outside the building.

11. Considering the material collected against the applicant, his role is shown as one of the persons who assaulted the deceased. However, exact role of the applicant is not made clear by the witnesses. Secondly, the deceased was shown beaten by others. Section 302 of Indian Penal Code was applied. Considering the material collected and fact that the name of applicant is disclosed by co-accused and that, only identification parade is the evidence shown against him. In all the circumstances, in my view, the applicant will entitle for bail on terms and conditions. Two persons are yet to be arrested, who are prime accused in the matter. Considering the same, when investigation is completed and charge-sheet is filed, there is no strong reason to detain the applicant for uncertain period. In view of the above, following order is passed."

4. Learned APP submitted that the applicant is not

entitled to claim parity. The photographs are relied upon to contend that the present applicant had actually held the deceased and is seen pushing him. It is submitted by learned APP that the applicant is clearly seen in CCTV footage.

5. Heard. There is no recovery made from the applicant. In paragraph 6, learned trial Judge has observed that even the co-accused -Vishal was seen along with other co-accused in CCTV recording of the camera. In paragraph 11, the trial Court has observed that for considering the material collected against Vishal, his role is shown as one of the persons who assaulted the deceased. However, the exact role of Vishal is not made clear by the witnesses. I find that role of the applicant is exactly similar to that of the co-accused Vishal who has been released on bail and on the ground of parity, even the applicant can be released on bail. The applicant is in custody since 13/08/2020 for almost 2 and 1/2 years. The trial is not likely to conclude any time soon. There is no criminal antecedent reported against the applicant. The charge-sheet is filed and investigation is

complete. Hence, the following order.

ORDER

(a) The application is allowed.

(b) The applicant – Sarvesh Nandlal Chaubey in connection with 272 of 2021 dated 29/07/2021 registered with APMC Police Station shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer of the concerned Police Station and shall keep him updated, if there is any change

(e) The applicant shall attend the trial regularly.

(f) The applicant shall report to the investigating officer once in a month on every Monday of the

first week between 11.00 a.m. and 1.00 p.m. and thereafter as and when called.

5. The application is disposed of.

(M. S. KARNIK, J.)