

VRJ

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

BAIL APPLICATION NO.1531 OF 2023

Vinayak S/o Ramdas Kinhale	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. K. N. Shermale for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 11, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973, in connection with C.R. No.18 of 2022 registered with Welhe Police Station, Pune for offence punishable under section 302 of the Indian Penal Code, 1860.

2. According to the prosecution, on 14th March 2022 at about 11:00 a.m incident took place on the Sonde Mathnagaon road near the poultry farm. There was a civil dispute between the informant and his family members with accused on the count of way to their field. On the day of incident, deceased Kisan Kinhale was returning to his home on his motorcycle from Gunjwani River to Sonde Mathnagaon village. When he reached near the poultry farm of the accused, at that time, the accused obstructed him on road, threatened to kill him being the case has been filed in Court. The

accused has assaulted him with a wooden stalk on his head, neck and hand and caused grievous injuries to him and thereby committed his murder. After completion of investigation charge sheet came to be filed against the accused.

3. The applicant was arrested on 15th March 2022. The applicant filed an application under section 439 of the Criminal Procedure Code, 1973, which has been rejected by the learned Sessions Judge by order dated 6th April 2023.

4. According to the learned advocate for the applicant, the applicant has been falsely implicated due to pending civil litigation between applicant's brother and family of the deceased. Statement of eye-witness Rajaram is not reliable as he has not stated name of the assailant in the medical history given to the hospital. Statements of other eye-witnesses are recorded after fifteen days. Therefore, delay in recording the statements takes away credibility of such statements. The injuries mentioned in column 17 of the postmortem report are not possible by the weapon recovered. Therefore, according to him, the applicant deserves to be released on bail.

5. Learned APP for the State pointed out statements of applicant's mother and child witness aged 6 years apart from statements of other three eye-witnesses. She pointed out recovery of weapon in pursuance of statement under section 27 of the Indian Evidence Act, 1872.

6. On perusal of the material on record, it appears that the incident alleged took place on 14th March 2022. Following

circumstances emerge from the material in the form of charge sheet:

- i. Statements of eye-witness recorded on 15th March 2022 which attribute specific role to the applicant.
- ii. Report is lodged on same day.
- iii. Statement of applicant's mother recorded on the next day attributes assault to the applicant.
- iv. Statement of child witness recorded on 30th March 2022 attributes role of assault to the applicant.
- v. Other two eye-witnesses attribute role to the applicant whose statements are recorded on 30th march 2023.
- vi. There is recovery of weapon in pursuance of statement under section 27 of the Indian Evidence Act, 1872.
- vii. Cause of death, as per the postmortem report, is homicidal due to multiple injuries.

7. Aforesaid circumstances raises sufficient ground against the applicant.

8. In so far as the submission of the applicant that non-disclosure of applicant's name in the MLC register despite eye-witness present in the hospital raises doubt on the credibility of the statement is concerned, the purpose of such register is to give idea to the hospital about occurrence of offence. It is not necessary that all the details of the incident are mandatorily required to be stated in such certificate. Ultimately, it is for the trial Court to consider

entire material on record to arrive at conclusion as to whether it is the applicant who has committed murder of the deceased. However, at this stage in view of statements of eye-witnesses, memorandum statement under section 27 of the Indian Evidence Act, 1872, postmortem report, and statement of applicant's mother, child witness and other eye-witnesses prima facie indicate complicity of the applicant in the murder of the deceased by assaulting him with Bamboo Stalk. Therefore, there is no material in the application.

9. The bail application is, therefore, rejected.

10. It is made clear that observations made in the present order are only for the purpose of deciding the application under section 439 of the Criminal procedure Code, 1973. However, the trial Court shall decide the case against the applicant on its own merits.

(AMIT BORKAR, J.)