

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

CRIMINAL BAIL APPLICATION NO.3301 OF 2021

Ashok Janu Chavan	Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Abdul Raheem Bukhari, Advocate for the Applicant.
Mr. S.R. Agarkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 27th APRIL, 2023

P.C. :

1. This is the second bail application preferred by the same Applicant. Earlier he had filed Criminal Bail Application No.1186/2020. Said application was withdrawn unconditionally, as recorded in the order dated 2.2.2021.

2. The Applicant is seeking his release on bail in connection with C.R. No.2/2019 registered at Tala police station, District–Raigad under Section 302 read with 34 of IPC. The investigation is over and the charge-sheet is filed.

3. Heard Mr. Abdul Raheem Bukhari, learned counsel for the Applicant and Mr. S.R. Agarkar, learned APP for the Respondent-State.

4. Learned counsel for the Applicant states that after withdrawal of his earlier bail application in February, 2021, after more than two years there is no progress in the trial. Even the charges are not framed. Therefore, I have considered this application with that additional ground as one of the main considerations for deciding this bail application.

5. The Applicant was arrested on 23.1.2019 and since then he is in custody.

6. The prosecution case is that the Applicant and his family were having dispute regarding an agricultural land situated in Borghar Haveli, Taluka-Tala, District-Raigad. The Applicant's family were demanding that the land be transferred in their names. The incident occurred on 22.1.2019. When the first informant i.e. the wife of the

deceased Maruti was in the house, she heard the shouts of her husband Maruti. He had gone towards river with his cattle. On hearing the shouts, she rushed there. She saw that the present Applicant and two other accused, namely, Kanoji Chavan and Namdeo Chavan were running away. The first informant and her daughter Sanjana went near Maruti. They saw that he had suffered serious injuries with sharp weapons on his throat and below the right side of the mandible. The first informant asked him as to who had assaulted him, but, before he could answer he breathed his last. The first informant and her daughter started crying loudly. Therefore, other villagers gathered there. After that, the first informant went to the police station and lodged her FIR.

7. Learned counsel for the Applicant submitted that there are no eye witnesses to the actual incident of assault. There are only two important witnesses i.e. the first informant Sangeeta and Sanjana but even they had not seen the incident. He further submitted that though there is

recovery at the instance of the present Applicant, it was from an open space which was accessible to all. He further submitted that the other accused are already released on bail and, therefore, on ground of parity the Applicant deserves to be released on bail.

8. Learned APP opposed this application. He submitted that the statements of the witnesses i.e. the first informant Sangeeta and her daughter Sanjana are recorded by the police as well as by the learned Judicial Magistrate, First Class under Section 164 of Cr.P.C. They have consistently stated that they reached the spot immediately on hearing the shouts and at that time the Applicant and others were running away from the spot. This has to be seen in the background of the motive attributed to the Applicant regarding the land dispute. He submitted that the weapon chopper which was recovered at the instance of the present Applicant showed presence of human blood as per the CA report. He, therefore, opposed this bail application.

9. I have considered these submissions. While it is true that the earlier bail application was withdrawn, but, that was in February, 2021. After that more than two years have passed and there is absolutely no progress in the trial. According to learned counsel for the Applicant he is not even produced on many occasions before the trial Court and, therefore, the trial has not commenced for no fault of the present Applicant. In this background, I have perused the charge-sheet to test the submissions made by learned counsel for the Applicant.

10. There are no eye witnesses to the incident of actual assault. Though the statements of the first informant Sangeeta and Sanjana are definitely incriminating, their statements implicate all the accused in the same manner. There is no specific distinguishing features against the present Applicant compared to the other two accused who are released on bail.

11. As far as recovery aspect is concerned, the blood stains showed presence of human blood but it is not

positively linked with the blood of the deceased. Therefore, there are some points in favour of the present Applicant. These grounds assume importance in the background of the fact that the trial has not commenced for a long time and the Applicant is in custody for more than four years.

12. Taking all these factors into consideration together, I am inclined to grant bail to the present Applicant. Hence, the following order :

:: O R D E R ::

- i. In connection with C.R. No.2/2019 registered at Tala police station, District–Raigad, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Criminal Bail Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.05.03
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