

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

CRIMINAL BAIL APPLICATION NO.2847 OF 2022

Nilesh Sitaram Rewale	Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Anand Pande, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th FEBRUARY, 2023

P.C. :

1. This is the second bail application by the same applicant. Earlier, he had filed Criminal Bail Application No.505/2021. That matter was argued for some time and when the Court expressed disinclination to grant relief in the application, learned counsel for the applicant had prayed for unconditional withdrawal of that application. The permission was granted and the application was allowed to be withdrawn unconditionally. That order was passed on 10.1.2022.

2. In spite of this unconditional withdrawal, this second bail application is preferred mainly on the ground that the trial has not begun. However, learned counsel for the applicant admits and learned APP states that the matter is kept for framing of the charge and, therefore, the trial will proceed further now.

3. In the interest of justice, I have heard learned counsel for the applicant again. The prosecution case is that between the night of 27.6.2018 and 28.6.2018, the deceased Sagar with his friends Salma @ Salim and Pooja @ Pankaj stood at the side of the road and they were drinking beer. Two unknown persons were discussing something with Pooja @ Pankaj. Sagar questioned them. Thereafter there was a quarrel. Out of those two persons, one person held Sagar from behind. The other one removed a knife and gave a forceful blow on Sagar's chest. They thereafter ran away. The FIR was lodged by Sagar's father as he came to know that Sagar was admitted to the hospital and there he was declared dead. The offence was registered vide C.R.

No.215/2018 on 28.6.2018 at Bangur Nagar police station, Mumbai under Sections 302, 201 read with 34 of IPC.

4. Learned counsel for the applicant submitted that the incident occurred on a spur of moment. Only one blow was given to the deceased and, therefore, the offence may not fall within the meaning of 'murder' as defined under Section 300 of IPC. He submitted that the applicant is young and he is in custody since 29.6.2018 and, therefore, bail be granted to him.

5. I have considered these submissions and I have perused the charge-sheet which is annexed to this application. There are statements of two eye witnesses i.e. Salma @ Salim and Pooja @ Pankaj. They have described the incident in detail. Though the incident occurred after a quarrel, but, after that one of the assailants had held the deceased and the other gave a forcible blow on Sagar's chest. The prosecution case is that the person who gave blow on the chest was the applicant. The statements of both these eye witnesses are consistent.

6. The postmortem notes show that there was deep penetrated oval shaped reddish stab wound over epigastrium 2 cm lateral of size 3 cm x 1.5 cm x cavity deep. The further description of the injury shows that there was a puncture wound through the space between 4th and 5th ribs. Intercostal muscles showed small haematoma of size 1 cm x 1 cm round. Pericardium was ruptured at lower end, multiple big clots seen of around 400 gms. And the cause of death was 'death due to shock due to the stab injury'. The charge-sheet shows that the investigating agency had received the opinion that those injuries were possible with the weapon recovered from the applicant.

7. Besides this, there was a test identification parade held on 1.8.2018. In that parade, both these eye witnesses identified the present applicant. There is also recovery of knife at the instance of the applicant and the panchnama shows that there were old blood stains.

8. Thus, there is strong evidence against the applicant. While it is true that the incident started with a

quarrel, but, the manner of assault shows that the injury was caused with intention and knowledge. It was on a vital part. The intention can develop at the spot itself. At this stage, it is not possible to observe that Section 302 of IPC is wrongly applied.

9. Considering all these aspects, no case for grant of bail is made out, particularly when the trial is ripe for hearing and it is kept for framing of the charges. Therefore, I do not find any merit in the application. The application for bail is rejected. Considering the material in the charge-sheet, the trial can be concluded within a short duration. The trial Court shall make efforts to conclude the trial expeditiously.

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(SARANG V. KOTWAL, J.)