

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

CRIMINAL BAIL APPLICATION NO. 747 OF 2024

Siddharth Bhagwan Khandagale Applicant

Versus
The State of Maharashtra Respondent

Mr. Rishi Bhuta a/w Omer Farooq, a/w Swapnali Chavan i/b
Pradeep Yadav, for the applicant.

Ms. Rajeshree V. Newton, APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE : 3rd APRIL, 2024**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R No. 100 of 2018 registered at Kamothe Police Station, Navi Mumbai, on 05/07/2018, under Sections 302, 120-B, 201 r/w Sec. 34 of the Indian Penal Code, under sections 3, 25, 4, 27 of the Arms Act and under Section 37 r/w 135 of the Maharashtra Police Act.

2. Heard Mr. Rishi Bhuta, learned counsel for the

Applicant and Ms. Rajeshree V. Newton, learned APP for the Respondent-State.

3. The FIR is lodged by one Abhishek Ghadge. He has stated that his sister got married to one Sunil Dere. The main accused Anil Dere had developed love affair with the informant's sister. However, Anil was blackmailing her. Therefore, the informant's family got her married to one Shantaram Khutal, who was also married earlier. Shantaram had divorce proceedings pending in connection with his first marriage. In this background, the incident in question took place on 04/07/2018 at about 9.25 p.m.. The informant and one Mohammed Aftab were parking their two wheeler in the building where Shantaram was staying. The informant suddenly heard some sound. He went there. He saw that one person was lying in a pool of blood. Two unknown persons were assaulting him. He got scared. He went to the house of Shantaram and informed his own sister what he had seen. Both of them then came back to the spot and saw that Shantaram was lying injured and those two persons were not seen. Shantaram

was taken to MGM Hospital, Kamothe but he was declared dead before admission. On this basis, the FIR is lodged.

4. The investigation was carried out and the Applicant was arrested on 06/07/2018. Since then he is in custody. The prosecution case is that the main accused Anil Dere did not like the informant's sister getting married to Shantaram. Anil was holding grudge against him. Therefore, he engaged the present Applicant and his brother Vasant Khandagle, to commit Shantaram's murder. Accordingly, on that date, both these accused, i.e. the Applicant and his brother Vasant assaulted Shantaram with the sharp weapons and committed his murder.

5. Learned counsel for the Applicant submitted that there are three eye witnesses i.e. the first informant, Mohd. Aftab and Gorakh Kate but they were not knowing the assailants and there is no circumstance showing that either of them had identified the present Applicant. There is no recovery at his instance. In short, there is absolutely no evidence against the present Applicant.

6. Learned APP opposed these submissions. She submitted that during the test identification parade, witnesses were under fear and therefore they did not identify the present Applicant. There is a strong material against co-accused Vasant. The Applicant is his brother. Therefore, the Applicant's involvement is clear. She submitted that the post mortem notes show that the deceased had suffered 20 injuries including incised and stab wounds. Hence, it was a brutal assault and therefore bail should not be granted to the Applicant. She also submitted that there are antecedents against the present Applicant.

7. I have considered these submissions. The crucial question in this case is as to whether there is any incriminating evidence against the present Applicant. In that respect, the entire charge-sheet is inadequate. The most important circumstance would be the identity of the assailants. As mentioned earlier, there were three eye witnesses. The first informant and Gorakh were called for test identification parade to enable them to identify the

accused. Both of them had identified the co-accused Vasant but they had not identified the present Applicant. This is an important consideration because even as per their statements, Vasant had threatened those witnesses and not the present Applicant and yet they identified Vasant but did not identify the present Applicant. Therefore, there is nothing to show that the Applicant's identity as one of the assailant was established during the investigation.

8. As submitted by learned counsel for the Applicant , there is no recovery of weapon or any other incriminating articles at the instance of the present Applicant. Learned APP submitted that there is a CCTV footage. However, there is no transcript of CCTV footage and no witnesses had identified persons caught on the CCTV footage.

9. Taking overall view of the matter, it is quite clear that there is hardly any evidence warranting further detention of the Applicant. The Applicant is in custody since 06/07/2018. Beyond framing of the charge, the trial has not progressed any further. In this view of the matter, the Applicant deserves to be released on

bail. Hence the following order.

ORDER

- (I) In connection with C.R.No.100 of 2018 registered at Kamothe Police Station, Navi Mumbai,, the Applicant is directed to be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend all the dates before the trial Court unless prevented by a reasonable cause.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)