

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1885 OF 2023

Darya Khatpatya Bhosale

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Shailesh D. Chavan a/w Mr. Prashant Lomate and Mr. Omkar More for the Applicant.

Mr. Nitin B. Patil, APP for the Respondent- State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th MARCH, 2024

P. C. :

1. The Applicant is seeking his release on bail in connection with C.R. No. 214 of 2020 registered with Koregaon Police Station, Satara for the offences punishable under Sections 302, 143, 147, 148, 149 of the Indian Penal Code, 1860.

2. The Applicant was arrested on 7th January, 2023 and since then he is in custody. The investigating is already over. The chargesheet is filed.

3. The prosecution case is that nine accused in the FIR were suspecting that the deceased – Vijay Kajya Kale was a police informant. The FIR was lodged by Vijay's father - Kajya Savtya

Kale. He has stated that on 5th July, 2020 at about 11.30 am, the accused including the present Applicant came towards Vijay and started fighting with him. Accused Ashok was having a sharp weapon. Three accused were having sticks. Other accused assaulted Vijay with sticks, kicks and fist blows. It is alleged that three accused including the present Applicant caught hold of Vijay from behind. Accused Ashok gave blow with a sharp weapon on left thigh of Vijay. Vijay rescued himself and started running away, however, he fell down. He had suffered heavy bleeding injury. All the accused ran away from the spot. Vijay was taken to the Government Hospital, but he was declared dead at the time of admission. On this basis, FIR was lodged.

4. Learned counsel for the Applicant submitted that two co-accused Atikraman Kale and Sachin Bhosale were granted bail by this Court vide order dated 16th February, 2021 passed in Criminal Bail Application No.188 of 2021. He submitted that the present Applicant's role is exactly similar to the two co-accused who were granted bail by this Court. Therefore, on the ground of parity, the Applicant deserves the same treatment and he may be released on bail.

5. Learned APP opposed this Application. According to him, the Applicant was absconding for more than 2 & 1/2 years and therefore his conduct will have to be considered. He submitted that the accused who were released on bail are not attending hearing of the trial regularly.

6. I have considered these submissions. I have perused the chargesheet and annexures to this Application. Statement of witnesses Kajya Kale, Ashwini Kale, Datta Kale, Mahesh Kale were recorded under Section 164 of the Code of Criminal Procedure, 1973. Their statements were also recorded under Section 161 of the Code of Criminal Procedure, 1973. Their statements are consistent and they describe the incident as mentioned in the FIR itself.

7. In this background, the order dated 16th February, 2021 passed in Criminal Bail Application No.188 of 2021 will have to be considered. In that order, it was observed that the postmortem notes show that there was only one incised wound over left thigh of the deceased and the cause of the death was mentioned as 'due to hypovolemic shock with stab injury'. The Applicants in that Application had ascribed the role of holding the deceased when the other accused - Ashok inflicted stab injury on thigh of the deceased. The stab was not given on the vital part of the deceased. The deceased suffered heavy bleeding because the main artery was cut. It was observed that there was possibility that the offence, if at all, may be a much lesser than punishable under Section 302 of the Indian Penal Code. On these observations, those two accused Atikraman Kale and Sachin Bhosale were granted bail.

8. On merits, the Applicant's case stands on the same footing and therefore parity applies to him. The only concerned is that the Applicant was not arrested immediately. According to the

learned APP, the Applicant was absconding for more than 2 & 1/2 years. After his arrest on 7th January, 2023, more than one year has passed. Therefore, considering the lesser role, I am inclined to grant bail to the present Applicant with certain conditions so that his presence is ensured.

9. Hence, the following order :

ORDER

- (i) In connection with C.R. No.214 of 2020, registered with Koregaon Police Station, Satara, the Applicant is directed to be released on bail on his executing PR 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 the concerned Police Station once in a fortnight for a period of one year from today, between 1.00 pm to 5.00 pm.
- (iii) Applicant shall attend all dates in the trial Court unless prevented by a reasonable cause.
- (iv) Applicant shall co-operate for the early disposal of trial.
- (v) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)