

ORDER PASSED BELOW EXH.21 IN SESSIONS CASE NO. 387/2016.

The accused Sanjay Mohol has filed present application seeking bail under Section 439 of the Code of Criminal Procedure in connection with the offence registered with Alankar Police Station vide C.R. No. 33/2016 for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, under Section 4 r/w Section 25 of the Arms Act and under Section 37(1) r/w Section 135 of the Bombay Police Act.

2] Perused the application, say filed by the prosecution at Exh.29 and the charge-sheet.

3] Learned advocate for the accused argued that the applicant has not committed any offence but he has been falsely implicated. According to the prosecution, when the deceased was seriously injured and was being shifted to the hospital in auto, he told the informant that the accused and co-accused assaulted him by the scythes on account of previous enmity. However, in the statement of auto driver Pandurang Ganeshkar there is no such reference. Even, the doctor who treated the injured stated that the injured is not in a position to give the statement. All these circumstances create doubt about the prosecution case. Further, there are material contradictions in the statements of the witnesses and the statement of important witnesses are not recorded. Further, the test identification parade is not conducted. There is no satisfactory evidence against the accused.

4. Further, he argued that after investigation the charge-sheet is filed. The accused is in jail since 23/02/2016. The accused is permanently residing with his family at Dattawadi, Pune and his family

is depending upon him. In such circumstances, the presence of the accused can be secure at the time of trial and there is no possibility of tampering the prosecution evidence. On the above grounds, he prayed that the accused be released on bail. He relied on the cases of *Sanjay Chandra V/s C B I* reported in *2011 CJ (SC) 257* and *Gurubaksh Singh Sibbia V/s State of Punjab* reported in *1980 CJ (SC) 180*.

5. On the other hand, learned APP submitted that there is direct evidence which shows that the accused and co-accused committed brutal murder of Sagar Shinde. Considering the seriousness of the offence and the evidence available against the accused, it is not desirable to release the accused on bail. If the accused is released on bail, there is possibility of pressurizing the witnesses and absconding.

6. I have gone through the above cited cases in which the object and scope of bail is discussed. Further, the Hon'ble Supreme Court has discussed the factors which are to be considered at the time of grant or refusal of bail. No doubt, grant or refusal of bail is discretion of the Court and at the time of deciding bail application, the factors like the nature of the offence, the severity of the punishment, the evidence available against the accused, the manner in which the offence is committed, the possibility of absconding, possibility of tampering with the prosecution evidence, antecedents and the interest of the society is to be taken into consideration.

7. Shivaji Shinde who is father of deceased Sagar has lodged the compliant on 23/02/2016. As per the complaint, the complainant was shifting injured Sagar to the hospital in auto. At that time, Sagar told that the accused and co-accused assaulted him with the scythe on

account of previous enmity at about 10.30 a. m. on public road. The statement of Raju Bapu Pawar corroborate the complainant.

8. The statements of Datta Kodilkar, Jitendra Ahir and Raju Baban Pawar show that they are eye-witnesses. As per their statement recorded by the police as well as by the Magistrate, the accused and co-accused gave dash by Duster to the two-wheeler of the deceased due to which deceased fell down. Thereafter, they chased the deceased and assaulted him by scythe. In the said incident deceased sustained several injuries.

9. Further, the post mortem report shows that the deceased had sustained 27 injuries and he was brutally murder. One scythe is recovered from the spot. The offence under Section 302 of the Indian Penal Code is registered against the accused which is serious for which the punishment of death or imprisonment of life is prescribed. Prima-facie, there is direct evidence against the accused showing his involvement in a serious offence. Further, the incident took place on a public road in a day light. In such circumstances, if the accused is released on bail, there is every possibility of pressurizing the complainant and the witnesses.

10] Considering the gravity of offence, severity of punishment, evidence available against the accused, manner in which the offence is committed and the possibility of pressurizing the witnesses, I am not inclined to exercise discretion in favour of the accused and the application deserves to be rejected. Hence, I pass the following order.

ORDER

Application (Exh.21) in Sessions Case No. 387/2016 stands rejected.

Dictated and pronounced in open court.

Pune

Date : 21/02/2019

(N.K. Maner)
Additional Sessions Judge, Pune.

CERTIFICATE

I affirm that the contents of PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Deshmukh A.E.. Steno (L.G.)

Court name : Shri. N. K. Maner
Additional Sessions Judge, Pune.

Date : 21/02/2019

Order signed by : 25/02/2019
Presiding Officer on

Order uploaded on : 25/02/2019