

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1345 OF 2015

Mahendra @ Appa Bhagwan Rajput **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

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Mr. S.P.Brahme, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE : 7th APRIL, 2015

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PER COURT :

1. This is an application filed by the applicant to release him on bail in connection with Crime No. 128/2014 registered with police station Shirpur, Tq. Shirpur, Dist. Dhule for the offences punishable u/s 302, 434, 143, 147, 148, 149 of the Indian Penal Code.

2. Heard Mr. S.P.Brahme, learned Counsel for the applicant and Mr. A.S.Shinde, learned A.P.P. for the

respondent – State in extenso.

3. The applicant is arrested on 02/11/2014 and since then he is languishing in jail in Magisterial custody remand. The investigation is already completed and the charge sheet is filed.

4. The date of assault on deceased Vijay is 26/04/2014. F.I.R. is lodged by Anjanabai, mother of the deceased on 10/06/2014 i.e. after 45 days of the incident.

According to F.I.R., deceased Vijay has made oral dying declaration to first informant that he was assaulted by the applicant by means of fighter on his head.

5. According to the learned A.P.P., in the charge sheet, there are statements of six eye witnesses against the present applicant, who have witnessed the occurrence. According to the learned A.P.P., the occurrence took place in their presence. The statements of the eye witnesses are recorded on 11/06/2014, 12/06/2014 and 16/06/2014. Learned A.P.P. has submitted, in so far as delay in lodging F.I.R. is concerned, that since the mother of the deceased was under sorrow, she could not file F.I.R. immediately. Without making any comment on the same, as submitted by the learned A.P.P. that six eye witnesses have witnessed that the deceased was attacked, said witnesses chose not to report the matter immediately nor it is their claim that they have disclosed the incident of assault to anybody. Thus, *prima facie*, the eye witnesses are the got up witnesses, which is the

submission of the learned counsel for the applicant, has some force.

6. Learned A.P.P. has also pointed out to me that there is recovery at the instance of the present applicant. I have gone through the discovery statement recorded by the Investigating Officer during the course of investigation. The said statement shows that it is omnibus statement and *prima facie*, I am afraid that any reliance can be placed on such omnibus discovery statement.

7. Since the investigation is already over and charge sheet is filed, further continuance of the applicant in custody is not required, especially in view of the fact that F.I.R. is lodged at belated stage and the statements of eye witnesses are also recorded after lapse of about 47 – 48 days.

8. Hence, I pass the following order :

(i) The present Criminal Application is hereby allowed.

(ii) Applicant Mahendra @ Appa Bhagwan Rajput be released on bail in connection with Crime No. 128/2014 registered with police station Shirpur, Tq. Shirpur, Dist. Dhule for the offences punishable u/s 302, 434, 143, 147, 148, 149 of the Indian Penal Code on the executing P.R.Bond of Rs. 10,000/- [Rupees Ten Thousand] with two solvent sureties of like

amount. Bail before the trial Court.

(iii) The applicant shall not tamper with the prosecution witnesses.

(iv) The applicant shall attend police station Shirpur, Tq. Shirpur, Dist. Dhule once a fortnight preferably on every Sunday between 10.00 a.m. and 1.00 p.m. till Charge is framed by the learned Sessions Judge.

(v) Needless to mention, the observations made in the present matter are only for the purpose of decision of the present Criminal Application and those are *prima facie* in nature. The learned trial Court shall not get influenced by the present Order while disposing of the trial.

(vi) With these observations, the present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]