

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

CRIMINAL APPLICATION NO. 2326 OF 2015

Shriru @ Shriram Datta Tambe	.. APPLICANT
Versus	
State of Maharashtra	.. RESPONDENT

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Shri S.B.Rajebhosale, Advocate for applicant
Smt.P.J.Bharad, APP for respondent State

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CORAM : V.M.DESHPANDE, J.
DATED : 7TH MAY, 2015

ORDER :-

Heard Shri Rajebhosale, learned counsel for applicant and Smt.Bharad, learned A.P.P, for State. Liberty is granted to the learned counsel for applicant to correct the year of the Crime.

2] The applicant is arrested in connection Crime No.I-106/2014 registered in M.I.D.C. Paithan police station, Dist. Aurangabad for offence punishable u/s 302 r.w. 34 of I.P.C.

3] Aba died due to head injury. Investigating Officer has already completed investigation. Charge sheet is already filed. Present applicant is in jail since 8/11/2014.

4] The dead body of Aba was found in agriculture field of one Tukaram co-accused, who is already released on bail by this Court.

Brother of deceased on 7/11/2014 gave information to the police station M.I.D.C. Paithan that body of his brother is found floating in the agricultural field of Tukaram Tambe. On the basis of intimation, Accidental Death u/s 147 of Cr.P.C. was recorded vide A.D.No.30/2014. On 8/11/2014 widow of Aba by name Satyabhamabai lodged report with M.I.D.C. Paithan police station. According to the F.I.R, one co-accused Sominath who is already released on bail by this Court and present applicant came to her house at 8.30 p.m. and asked her husband that they want to enjoy "mutton party" and for that he should take some utensils and bread with him. The first informant objected her husband that he should not leave the place since she has already prepared meal. However, ignoring such resistance from wife, Aba proceeded with applicant Shiru and co-accused Sominath.

5] Perusal of the charge sheet reveals that there is no direct evidence against present applicant. The learned A.P.P, pointed out statement of one Laxman which is recorded on 12/11/2014 i.e. after the arrest of the present applicant. Even the said statement also does not show any incriminating material against applicant leading to the death atleast prima facie of Aba. From the charge sheet, it appears that some dispute occurred in between deceased and the accused persons. Thus, prima facie, the incident has occurred in a spur-of-moment and under the influence of liquor. Whether it is an case punishable u/s 302 of I.P.C. or not is a debatable question. However, looking to the fact that investigation is over, charge sheet is filed, there is no direct evidence against present applicant, custodial presence of applicant is not warranted, I pass following order :

ORDER

A] Application is allowed. Applicant shall be released on bail in connection Crime No.I-106/2014 registered in M.I.D.C. Paithan police station, Dist. Aurangabad for offence punishable u/s 302 r.w. 34 of I.P.C, on he furnishing P.R. Bond of Rs.10,000/- (Rs.Ten thousand only) with two solvent sureties in the like amount. Bail before Sessions Court.

B] The applicant shall attend M.I.D.C. Paithan police station once in fortnight preferably on every Saturday between 3 to 4 p.m. till charge is framed by Sessions Court.

6] Needless to mention, the observations made in the present application are made only for the purpose of this application. The learned Sessions Judge shall not get influenced by the observations while conducting trial.

(V.M.DESHPANDE,J.)

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