

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

Criminal Application No. 2772 of 2015

Shivaji Mallikarjun Tondchire. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Joydeep Chatterji, Advocate, for applicant.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 26th JUNE 2015

ORDER:

1) The application is filed for bail. Previous application bearing Criminal Application No.442/2015 of the present applicant was withdrawn by the applicant on 10 February 2015. This Court had given opportunity to the present applicant to file application for bail again in this Court after receipt of histopathological report. Both the sides are heard.

2) There are allegations that on 26-11-2014 at about 9.00 p.m. when deceased Baswaraj was questioning present applicant as to why present applicant had plucked mangoes of the trees standing in the land in possession of Baswaraj quarrel started. Allegations are made that during quarrel present applicant and his brothers assaulted by using fist blows and kicks to the deceased in the presence of his mother, father and three witnesses like Virbhadra Tondchire, Shivraj Birge. The father has made allegations that after initial assault when he was taking Baswaraj to home they were again obstructed and Baswaraj was again assaulted by these persons near the house of Manik Madhavrao Biradar.

3) Due to the assault made Baswaraj had chest pains and so he was taken to Lakhotiya Hospital Udgir. The doctor examined him and declared that he was already dead. Post mortem was conducted on the dead body and the post mortem report shows that there were two surface wounds like (i) contusion on left elbow joint; and, (ii) contusion on left lateral lower side of mid axillary line. On the basis of the post mortem report the doctor

was not in a position to form definite opinion and so he preserved internal organs for histopathological examination report. The histopathological examination report shows that the expert could not form definite opinion after examining vital organs. The doctor who conducted post mortem then has given opinion regarding cause of death as "acute myocardial infarction".

4) The learned Additional Public Prosecutor drew attention of this Court to the supplementary statements of the father in which he has tried to say that during assault present applicant used metal fist and assault was made by using metal fist. Such statement was given by the mother. But no such statements are given by other witnesses.

5) The applicant is behind the bars since 4-1-2015. In view of nature of dispute; the aforesaid nature of material and the fact that other brothers of the applicant are granted bail by this Court, this Court holds that it is not desirable to keep the applicant behind the bars till disposal the case.

6) In the result, the application is allowed. The applicant is to be released on bail in Crime No.133/2014 registered in Deoni Police Station, District Latur for offences punishable under section 302 read with 34 of the Indian Penal Code on his furnishing PR and SB of Rs.15000/-. He is not tamper with the prosecution witnesses. He is not to commit similar offence.

Sd/-
(T.V. NALAWADE, J.)

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