

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3314 OF 2015

Ganesh S/o Dhondiba Chavan
Age : 43 years, Occu : Agri.,
R/o Nanegaon, Tq. Badnapur,
Dist. Jalna
(Applicant is in jail)

.. Applicant
(Orig. accused)

Vs.

The State of Maharashtra

.. Respondent

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Mr. R.N. Dhorde, Sr. Advocate i/b. Mr. V.N. Shelke,
Advocate for the applicant
Mr. R.P. Phatke, APP for the respondent-State
Mr. A.L. Kanade, Advocate for assist the A.P.P.

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CORAM : M.T. JOSHI, J.

DATED : 07/07/2015

ORAL ORDER :

Heard both sides.

2. The present applicant, who is arrested by Badnapur Police Station, Dist. Jalna in Crime no. I-67 of 2014 for the offences punishable under section 143, 147, 148, 149, 120(B), 307, 302 of the Indian Penal Code and under section 3(1)(x) and 3(2)

(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under section 4/25 of the Arms Act and under section 135 of the Bombay Police Act, is praying for his release on bail.

3. His earlier application bearing Criminal Application no. 6398 of 2014 was allowed to be withdrawn by this Court vide order dated 24/12/2014 with liberty to file similar application in case the trial is not concluded within a period of six (6) months. Since the trial is not begun and Mr. Dhorde, learned Senior Counsel i/b Mr. Shelke makes a statement that even the Chemical Analyzer's report is yet to reach the concerned Sessions Court, the present application is filed.

4. Report dated 5/5/2014 of the injured brother of the deceased would show that on 3/4/2014, the present applicant alongwith 10 other named accused had assaulted the deceased as well as the

complainant with sword, hammer etc. The applicant gave a blow of sword over the head of the deceased. The F.I.R. would show that since the deceased as well as the complainant were unconscious, the report could not be filed immediately and the same was lodged on 5/4/2014.

5. The post-mortem examination note regarding the deceased would show that he was 30 years old and had suffered following injuries on his person:-

- i) Evidence of sutured wound four in number over occipital
- ii) Evidence of one sutured wound over right fronto parietal region
- iii) Right ankle joint swollen
- iv) Left ankle joint with foot swollen
- v) Evidence of tracheotomy wound over neck

Internally, fracture to both the tibias were noted. The death has occurred due to pulmonary thrombo-embolism due to polytrauma with head injury.

6. Mr. Dhorde, learned senior counsel submits that statement in the FIR that both the deceased as well as the complainant became unconscious on the date of the incident is false, as the chargesheet would show that both of them were conscious when they were taken by auto-rickshaw and in the hospital, as per the hospital record. He further submits that number of persons are impleaded in the offence, though, according to the prosecution case itself, the Police had reached at the time of occurrence only. He further submits that the trial may take its own time and considering the nature of the injuries on the person of the deceased, the fact that almost all the other accused are already released on bail by this Court, the applicant be released on bail.

7. Learned A.P.P. as well as learned counsel assisting the A.P.P. however opposed the application. They submit that some of the accused who are released on bail have misused the liberty

and had attempted to assault the complainant regarding which the complaint was filed. It was registered as Non-Cognizable case by the Police.

8. Upon hearing both sides, in my view, since Chemical Analyzer's report is yet to be received to the Sessions Court, the trial is not likely to commence soon. Even after commencement of the trial, since 11 accused are involved in the offence, the same may take its own time. Considering the fact that the trial is yet to begin, in my view, in the nature of the material on record, without making any comment regarding the belated or prompt filing of the F.I.R. at this stage, the applicant can very well be released on bail on certain conditions. Hence, the following order:-

9. The Application is allowed.

10. The applicant be released on bail in Crime no. I-67 of 2014 registered with Badnapur Police Station, Dist. Jalna for the offences punishable

under section 143, 147, 148, 149, 120(B), 307, 302 of the Indian Penal Code and under section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under section 4/25 of the Arms Act and under section 135 of the Bombay Police Act, upon his executing P.R. bond in the sum of Rs.30,000/- (Rs. Thirty Thousand) and also upon furnishing surety in the like amount.

11. The applicant shall not enter the territorial limits of Badnapur Taluka for a period of three (3) years or till the trial is concluded, whichever occurs earlier without any prior permission from the concerned Sessions Court.

12. Mr. Dhorde submits that the applicant would reside at Aurangabad and would report to Mukundwadi Police Station, Aurangabad.

13. In the circumstances, the applicant is directed to report to the Mukundwadi Police Station, Aurangabad on every 2nd and 4th Sunday of the month

for a period of one (1) year from the date of this order.

14. The applicant shall not attempt to influence any of the prosecution witnesses in any manner.

15. Criminal Application stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/-