

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 3853 OF 2015.

RAJENDRA S/O NAMDEORAO LOHAR.

VERSUS

THE STATE OF MAHARASHTRA.

Appearance =>

Mr. S.S. Choudhary, Advocate for the Applicant.

Mrs. Pratibha Bharad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 10th August, 2015.

Per Court :-

Present Criminal Application is filed by the Applicant for grant of regular bail in connection with CR No.369/2014 registered with Police Station, Osmanabad (City), District - Osmanabad for the offences punishable under Section 302 of the Indian Penal Code.

[2] Heard Mr. S.S. Choudhary, learned counsel for the Applicant and Mrs. Pratibha Bharad, Additional Public Prosecutor for the State of Maharashtra.

[3] Deceased in the present Crime is Mahesh. The First Information Report is lodged by Hirabai Pandurang Jare, who is his mother. According to the First Information Report, on 18th December, 2014 when the First Informant reached to her house, in the evening, she found deceased Mahesh was sleeping on a cot, in a injured condition.

According to the First Information Report, the First Informant enquired with Mahesh as to who has assaulted on him. The First Information Report is very specific that, that time, Mahesh only uttered the words “रा रा”. Thereafter, he was admitted in the hospital ultimately he succumbed to the injuries.

From the First Information Report itself it is clear that, the deceased was habituated to the homosexuality and was having relations with many persons.

[4] According to the prosecution, the supplementary statement of the First Information was recorded on 28th January, 2015 and on that day, she for the first time states that, deceased disclosed the name of present Applicant as his assailant.

[5] Worth to note that, after getting information about the assault, brother and sister of deceased immediately rushed to the Hospital and enquired with the mother. Their statements reveal that, their mother disclosed to them that Mahesh only uttered the words “रा रा”.

[6] Further there is statement of one Ganesh Kadam who has extended immediate help to the First Informant. His statement also disclosed that, Hirabai did not disclose to him that present Applicant is the assailant as per the version of the deceased.

[7] The prosecution intends to rely upon the statement of Mahadeo in order to show that, in the proximity of time, the Applicant was found to be leaving the house of the deceased. Only on such feeble evidence, the liberty of the Applicant cannot be curtailed especially,

when the charge sheet is already filed and in the charge sheet, there is no other incriminating material available against the present Applicant. That leads me to pass the following order :-

ORDER

- (i) Criminal Application is allowed.
- (ii) Applicant - RAJENDRA S/O NAMDEORAO LOHAR shall be released on regular bail on he executing PR. Bond of Rs. 15,000/- [Rs. Fifteen Thousand.] with one solvent surety in the like amount, in connection with CR No.369/2014 registered with Police Station, Osmanabad (City), District - Osmanabad for the offences punishable under Section 302 of the Indian Penal Code.
- (iii) Bail before the trial court.
- (iv) The Applicant shall not tamper with the prosecution case nor shall try to exert pressure on the First Informant or any of his relatives.
- (v) With this Criminal Application is allowed and same is disposed of, accordingly.

(V.M. DESHPANDE, J.)