

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

CRIMINAL APPLICATION NO. 5113 OF 2015

Ganpaya @ Ganpat Rambhau
Vhanmane

..... **APPLICANT**

V E R S U S

The State of Maharashtra

.... **RESPONDENT**

.....

Mr. M.S.Patil, Advocate for Applicant.

Ms. S.S.Raut, A.P.P. for Resp. - State.

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CORAM : INDIRA K. JAIN, J.

DATE : 22nd DECEMBER, 2015

ORAL ORDER :-

. Here is an application for regular bail in Crime No. 52/2015 registered at Shiradhon police station, Taluka Kallam, district Osmanabad for the offence punishable u/s 302 of the Indian Penal Code.

2. Heard Mr. M.S.Patil, learned counsel for applicant and Ms. S.S.Raut, learned A.P.P. for Respondent – State. Perused papers of investigation.

3. Kalyan Dagdu Deokate resident of Shiradhon, Taluka Kallam, district Osmanabad is the first

informant. He is son of deceased Dagdu Deokate. On 24/05/2015 Kalyan lodged report stating therein that they have agricultural land at Shiradhon. For the safety of land his father Dagdu used to sleep in the night in cattle shed situated in the field.

On 04/05/2015 Kalyan and his wife worked in the field. In the evening they returned home. Dagdu stayed in the field. On 05/05/2015 at around 5.30 a.m. Kalyan and his son Abhijit went to the field to bring milk. They saw Dagdu lying in front of cattle shed with bleeding injuries. On being enquired Dagdu disclosed that at around 11.00 – 11.30 p.m. dogs were barking. So he came out of the cattle shed. He saw applicant standing there. Dagdu asked him the reason of his coming. On that applicant assaulted Dagdu with stick and caused multiple injuries. Kalyan then shifted Dagdu to the hospital at Latur. Dagdu succumbed to injuries during treatment on 23/05/2015.

4. Learned counsel for applicant vehemently contended that incident occurred on 04/05/2015 and report was lodged after 20 days on 24/05/2015. According to applicant there was previous enmity between applicant and complainant and therefore he has been falsely implicated by lodging false and after-thought F.I.R.

5. Learned A.P.P. strongly resisted the application on the following grounds.

- [i] Delay has been satisfactorily explained in F.I.R.
- [ii] The oral dying declaration was made by the deceased to his son and grandson.
- [iii] Witnesses on last seen have been examined during investigation.
- [iv] Recovery of stick at the instance of accused.
- [v] Recovery of blood stained clothes from the accused.

6. It is pertinent to note that deceased succumbed to injuries on 23/05/2015. Incident occurred on 04/05/2015. Injured was alive for about 19 days. No efforts were made at the end of investigating agency to get the dying declaration of injured recorded through Special Judicial Magistrate.

7. F.I.R. is belated. So far as statements of witnesses on last seen and oral dying declarations are concerned, they were recorded on 24/05/2015 and thereafter. Incident occurred during night on 04/05/2015. Admittedly there is no eye witness to the incident.

8. In the above premise this court finds it fit

case to enlarge the applicant on bail. Hence, the following order.

ORDER

- (i) Criminal Application No. 5113 of 2015 is allowed.
- (ii) Applicant Ganpaya @ Ganpat Rambhau Vhanmane is released on bail in Crime No. 52/2015 registered at Shiradhon police station, Taluka Kallam, district Osmanabad for the offence punishable u/s 302 of the Indian Penal Code on P.R. and S.B. of ₹ 15,000/- [Rupees Fifteen Thousand] each.
- (iii) Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required.
- (iv) Bail before the trial Court.

**[INDIRA K. JAIN]
JUDGE**