

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 64 OF 2015

Sanjay Raosaheb Gotis	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

Mr. R.R.Salvi a/w Mr. Robin Thomas, Advocate for the applicant
Mr.S.S.Pednekar, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 4th March, 2015.

P.C.

This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 8.11.2013 in Crime No.74 of 2013 registered at Trimbakeshwar Police Station for the offence punishable under Section 302 read with Section 34 of IPC.

2. It is the case of the prosecution that on 7.11.2013, Ahilyabai Gotis lodged a report at the police station alleging therein that her cousin maternal uncle Sayaji Lahanu Ahire was residing in a hut at Chowki Matha, Trimbakeshwar, Nashik. He used to give Ayurvedic medicines to the people in this area. He also used to give some holy ash to the villagers. She has specifically alleged that some people used to engage for performing black magic. That the applicant was

suffering from abdominal pain. For quite some time, he used to take the holy ash from Sayaji to Rupabai. That the sister of the complainant had alleged that Sayaji has performed black magic upon her and her family members and therefore the family members are ill. On 6.11.2013, the complainant was residing in the hut of Baba. In the early hours at about 3 a.m., the complainant had heard the voice calling upon Sayaji. He had seen his sister Rupabai and her son Sanjay were present outside. They had a grievance with Babaji had performed black magic on their family members. Sayaji tried to escape from the hut from the rear door. The applicant is alleged to have followed Sayaji. Sayaji had fallen in a pit. The complainant and others had seen the applicant hitting a stick in the pit. Soon thereafter they had seen Baba. Sayaji had fallen unconscious in the pit. He was taken to the hospital and declared dead.

3. The learned counsel for the applicant submits that it is not the case of prosecution that the applicant was seen carrying the stick with him. There is no specific foundation that the applicant was actually assaulting Sayaji. It is further submitted that Sayaji being an old man of 67 years old had sustained injuries due to fall in the pit.

4. Perused the post-mortem notes. The deceased Sayaji had sustained CLW at

occipital region 4 cm. X 4 cm. X bone deep, CLW at right eyebrow and CLW at right side of chin bone deep. There was fracture of occipital bone. Fracture of right side of Mandible right index finger , left index finger. All injuries are ante-mortem injuries. Column No.19 shows Hematoma at biparietal region of skull, extradural hemorrhage present all over brain. The cause of death was head injury. At this stage, it would be difficult to say that the applicant had not assaulted the deceased in view of the fact that there are eye witnesses to the incident and had seen the applicant entering into the pit and hitting with a stick.

5. The learned counsel for the applicant submits that taking the case of the prosecution as it stands, it cannot be said that the applicant had intention to cause homicidal death of deceased Sayaji. Further, this issue can be adjudicated upon only at the end of the trial after adducing substantive evidence to that effect. The intention and knowledge cannot be gathered at this stage.

6. Hence, the application being sans merit, stands rejected.

7. The observations made hereinabove are prima facie in nature and the Sessions Court shall not be influenced by the same at the time of trial.

(SMT.SADHANA S.JADHAV, J.)