

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.479 OF 2015**

Ashok Bajirao Ovhal

....Applicant.

Versus

The State of Maharashtra & Anr.

...Respondents.

Mr. Rajendra Anbhule, advocate for the Applicant.

Mr. Arfan Sait, APP for the respondent-State.

Mr. H.M.Bhangale, PSI, Paud police station present.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : June 9, 2015.

P.C.:

Application is moved for anticipatory bail as the applicant-accused apprehends arrest in the C.R.NO.56 of 2011 which is registered at Paud police station for the offences punishable under Sections 302, 326, 323, 504 and 506 read with Section 34 of the IPC. On 7.4.2011 at night one Uttam Oval was assaulted by the applicant-accused, Kushaba Ovhal and the wife of the applicant-accused brutally with iron pipe and kicks and fists and blows. Bleeding injuries were caused to him. After admission to the hospital, he succumbed to the injuries on 14.4.2011. Since the day of assault, applicant-accused is absconding. Charge-sheet

was filed against the other two co-accused namely, Kushaba Ovhal and Vanita Ovhal. Pending trial Kushaba died and so the trial proceeded only against the accused Vanita Ovhal. Applicant-accused was shown absconding. His case was separated. Trial was concluded in acquittal by the judgment dated 26.2.2015 delivered by the Additional Sessions Judge, Pune. The present applicant-accused, who was absconding moved application for anticipatory bail before the Sessions Court during the pendency of the trial and it was rejected. Hence, this application.

2 The learned counsel for the applicant-accused relied upon the observations of the learned Additional Sessions Judge made in the judgment dated 26.2.2015 especially in paragraphs 13,14 and 25 thereof. He submits that the learned Sessions Judge has held that it was accidental death and, therefore, accused was acquitted. He submits that in these circumstances, applicant-accused is entitled to pre-arrest bail.

3 The learned prosecutor submits that there were written so also oral dying declarations. Charge-sheet was not filed against the present applicant-accused. He was absconding since the day of assault. The learned prosecutor submits that he has no instructions whether the proclamation was issued against the applicant-accused or not. He submits that it is the case of murder and the applicant-accused is not to

be granted bail.

4 This is application for pre-arrest bail in the murder case. There is a evidence of two oral dying declarations and one written dying declaration. Finding given by the Additional Sessions Judge in the absence of the appeal preferred by the State is to be taken as final and conclusive. However, charge-sheet is not filed against the present applicant-accused. He was not put on trial. I have carefully perused relevant paragraphs and the reasoning given by the learned Additional Sessions Judge. It appears that the prosecution did not examine medical officer, who recorded dying declaration. However, the police officer to whom the deceased made dying declaration and disclosed the names was examined. Under such circumstances, no benefit can be given to the applicant-accused, who is absconding. I fail to understand as to why proclamation was not issued in this case by either Magistrate or the learned Sessions Judge.

5 Rejected.

Copy of this order is to be sent to the concerned Sessions Judge.

(MRS.MRIDULA BHATKAR, J.)

