

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1005 OF 2015**

Sopan Shivram Gadge	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Satyavrat Joshi for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 1st SEPTEMBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 307 of 2014 registered with the Narayangaon Police Station, Pune Rural, Pune, for the alleged offences punishable under Sections 302, 307, 323, 504, 506 of the Indian Penal Code, 1870.

3. The incident in question has taken place on 11th October, 2014 at about 5:30 p.m. The complainant Santosh Keskar is an eye-witness to the said incident. He has alleged that Dharma Balme, the deceased and he

had taken the cattle for grazing. He has stated that the sheep were grazing in the field of Jagannath Gadge, when one of the sheep strayed into the field of the present applicant. He has alleged that the applicant got enraged and started abusing and assaulting him. The applicant being enraged is stated to have gone home and brought a scissor and assaulted the complainant with a scissor on his hand. He has alleged that the deceased Dharma came to the spot and tried to separate the complainant and the deceased. It is alleged that the applicant questioned the deceased why he was intervening in their fight, and assaulted him with the scissor on his neck.

4. Learned Counsel for the applicant submitted that the incident in question is not a premeditated one and has taken place on the spur of the moment. He submitted that the scissor which was used in the assault was a scissor which was used for stitching clothes. He submitted that the offence could not be one under Section 302 but would be a lesser offence. Learned Counsel for the applicant contended that the deceased was taken to two doctors before he was taken to Pune, and due to excessive bleeding, the deceased succumbed to the injury.

5. Learned A.P.P opposed the bail application. He submitted that the applicant had assaulted the deceased with a scissor on his neck which resulted in an injury to the left carotid artery. Learned A.P.P states that till date, charge has not been framed.

6. Perused the charge-sheet. The incident had occurred on 10th October, 2014; the complaint was lodged on 11th October, 2014 alleging offences punishable under Sections 307, 302, 323, 504, 506 of the Indian Penal Code; and on 12th October, 2014 the deceased succumbed to the injuries. Prima facie, it appears from the statement that the complainant who is an eye-witness that the alleged incident of assault took place on the spur of the moment. The assault is by a scissor used for stitching clothes. Considering the aforesaid facts, the question whether the alleged offence would be one under Section 302 or would constitute a lesser offence, would be a matter which would be decided by the trial Court, after evidence is led in that regard. Considering the peculiar facts of the case and the fact that investigation is over and charge-sheet is filed, the applicant deserves to be enlarged on bail on the following terms and condition:

ORDER

- (i) The applicant be released on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall not tamper or attempt to contact the complainant or any witness concerned with the case;
- (iii) The applicant shall attend the concerned Police Station once in a month on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to attend the Court hearing on every date and to cooperate with the conduct of the trial;
- (vi) An undertaking in terms of clauses (ii) to (v) above be filed by the applicant in the Court seized of the matter within two weeks after his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The aforesaid observations are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.