

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2031 OF 2014

Santosh Barma Mane	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. V.B. Koshe, Senior Advocate i/b. Mr. S.H.
Deokar, Advocate for the Applicant.
Ms. A.T. Javeri, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 22, 2015

P.C.

. Heard.

2. The learned counsel for the applicant/
accused charge-sheeted by Samta Nagar police
station, Mumbai for committing murder of one Ramji
Shinde by assaulting him on 20-12-2013 at about
9.30 pm has pressed the prayer for bail on three
counts. Firstly the account of incident as
reflected from the statement of eye witness

Ramdayal Rajbhar reveals that during the quarrel and free fight the applicant has assaulted the deceased. It is urged as such the case of the applicant would be covered by exception 4 of Section 300 of Indian Penal Code and hence the offence occurred at his hand will not transcend beyond the offence punishable under Section 304 Part(i) of Indian Penal Code. Secondly, it is contended that injuries mentioned in column 17 of postmortem notes reveals that none of them is on the vital part of the body and the death has been ensued due to faulty liver and as such applicant can not be said to have committed the offence of murder. Thirdly, it is contended that the prosecution material collected is incredible in as much as the statement of so called eye witness Rajbhar is belatedly recorded on 14-01-2014 and of another witness i.e son of the deceased on 13-03-2014. It is thus prayed that the prayer for bail deserves to be considered.

3. The learned APP has objected the prayer for bail by submitting that due to death of the father, the son of the deceased was frightened and as such investigating agency was not able to record his statement earlier. It is submitted that account of incident as reflected from the statement of witness Rajbhar does not reveal that a free fight has taken place in between the deceased and the applicant. It is submitted that merely there was a scuffle as reflected in the said statement, *prima facie* such inference cannot be drawn. It is submitted that if victim is assaulted by somebody then he bound to make a struggle for escaping. It is urged that material in the said statement does not reveal that at any point of time, applicant was assaulted by the deceased. It is submitted that during the process of assault and particularly after assaulting by hands, the applicant was not satisfied and had picked up a weapon which was available at the said place i.e. iron rod and

commenced further brutal assault. It is urged that the same squarely reflects about the intention of the applicant.

4. The learned APP by drawing attention to the cause of the death as given in postmortem notes submitted that the cause of death is not attributed only to faulty liver but the same is attributed as *"death due to hemorrhage and shock due to multiple injuries with faulty liver"*. It is submitted by learned APP by making reference to column No.21 of postmortem notes that about 1500 c.c. blood clots were found present in the abdomen of the deceased. It is urged that *prima facie* there being no other reason of occurring of such blood in the abdomen of the deceased but the assault made, the applicant is responsible for the said hemorrhage occurred in abdomen of the deceased. It is submitted that account of incident also reveals that prior to using the weapon iron rod the applicant had

assaulted the victim by fist blows. It is urged that having regard to all the said facts *prima facie* at this stage, a conclusion cannot be drawn that the offence committed would not transcend beyond the offence under Section 304 of Indian Penal Code.

5. The perusal of the charge-sheet reveals that the factual aspect urged by both the sides are in consonance with the material in charge-sheet. However, merely because of the delay in recording the statement of eye witness, the same does not *ipso facto* entitle to them the material in such statement as incredible. Having regard to it and the account of incident as disclosed from the said material *prima facie* does not reveal that at any point of time deceased has attacked the applicant, it is difficult to accent at present stage even *prima facie* that the case of the applicant would be covered by exception 4 of Section 300 of Indian

Penal Code. Similarly considering the cause of death and the other features pointed out by the learned APP, it appears that hemorrhage and shock sustained by the deceased was due to acts committed by the applicant. Having regard to it, it is difficult to entertain the prayer for bail, on the count of there being no injuries on vital organ.

6. Resultantly there is no merit in the application. Application stands rejected.

(P.D. KODE, J.)