

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1032 OF 2016

Krusna s/o Dilip Bhoi,
age : 23 years, Occu.: Labourer,
R/o.: Gawaliwada, Sanjay Nagar,
Nandurbar, Taluka and Dist. Nandurbar .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....

Mr. Rajendra S. Deshmukh, Advocate for the applicant
Mr. A.S. Shinde, APP for the respondent-State

.....

CORAM : M.T. JOSHI, J.

DATED : 17/03/2016

ORAL ORDER :

Heard both sides.

2. The present applicant, who is arrested by Nandurbar City Police Station, Dist. Nandurbar, in Crime no.70 of 2015 for the offences punishable under section 302, 307, 323, 504, 506 read with 34 of the Indian Penal Code and under section 4/25, 5/25 of the Arms Act and under section 37(1)(3) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and

under section 135 of the Bombay Police Act, is praying for his release on bail.

3. The complaint of deceased – Bhaidas when he was injured, dated 12.07.2015, would show that at about 12:15 pm in the night, the present applicant alongwith others had assaulted him with a sword due to previous enmity. One Tirath Dilip Bhoi had assaulted him with iron pipe. Besides these two persons, there were Dilip and Sitya. At that time, while Dilip and Sitya caught hold the deceased, the present applicant had by a sword, assaulted him on his head, ear and leg.

. On the basis of the said statement, initially the offence punishable under section 307 read with 34 of Indian Penal Code is registered on that day.

. On 23.08.2015, the deceased has died and, therefore, the crime for the offence punishable under section 302 of the I.P. Code is added.

4. Learned counsel for the applicant took me through the record. He submits that death summary filed

with the charge-sheet would show that the deceased has died due to Toxic Epidenmal Septic Multiorgan failure. He submits that it cannot be attributed to the injuries suffered by the deceased.

. He further took me through the statement of the deceased recorded by the Magistrate under provisions of section 164 of the Code of Criminal Procedure, wherein, even one more accused - Raju is named and there was certain variation in the details of the incident as given in the F.I.R. and the said statement.

5. Learned A.P.P. opposed the application. He submits that the F.I.R. of the deceased would be a dying declaration. He submits that in the F.I.R. as well as in the statement, consistently, it is averred that the present applicant was the author of the injury caused by the sword. The injury certificate would show that the deceased has, in-fact suffered grievous injuries to his head by a sharp weapon.

. In the circumstances, he submits that as there is strong *prima facie* case against the applicant, he may not be released on bail.

6. Considering all the facts on record and finding that there is a strong *prima facie* case against the applicant, in my view, no case for release of the applicant on bail is made out.

7. The Application is therefore dismissed.

Sd/-
[M.T. JOSHI]
JUDGE

arp/-