

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2611 OF 2016

YOGESH DEVIDAS TAYADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Chatterji Joydeep
APP for Respondents: Mr. A.S. Shinde

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CORAM : V. K. JADHAV, J.
DATED : 18th JULY, 2016

PER COURT:-

1. Heard learned counsel for the applicant and the learned A.P.P. for the respondent-State.

2. On the basis of complaint lodged by one Rajratna Anil Sapkale on 16.5.2015, Crime No. 23 of 2015 came to be registered at Bhusawal Taluka Police Station, District Jalgaon for the offences punishable under Sections 302 r.w. 34 of I.P.C. against the present applicant and one more accused. It has alleged in the complaint that on account of previous enmity, the present applicant committed murder of father of the informant, by giving blows of knife on the neck and abdomen of deceased Anil Keshav Sapkale. On the basis of allegations, the applicant came to be arrested on 27.5.2015. He is still in jail. The applicant has preferred this application for getting

released on bail. His application with similar prayer came to be rejected by the Additional Sessions Judge, Bhusawal in Sessions Case No. 79 of 2015.

3. Learned counsel for the applicant submits that there is inconsistency between ocular evidence and medical evidence. Even though weapon Sura (big knife) shown to have been recovered at the instance of the applicant, the findings recorded in the C.A. report are inconclusive. It reveals from the postmortem report, and most particularly column No.17, that deceased Anil had sustained the contused lacerated wounds on his neck and other parts of the body. Further, it revealed that the cause of death, which has been subsequently given in the form of certificate dated 02.08.2015, is because of rupture of structure over neck and other vital organs of the body, due to injury as mentioned in the postmortem report and due to heavy bleeding. The contused lacerated wounds are not possible with the help of weapon like Sura (big knife).

4. Learned A.P.P. submits that there is strong *prima facie* case against the applicant. There are eye witnesses to the incident and there is, *prima facie*, strong evidence against the applicant that at the time of incident, he gave blows of knife to deceased Anil Sapkale. Furthermore, the said big knife came to be recovered at the instance

of the accused during the course of investigation. Even blood stained clothes of the applicant/accused also came to be seized. Learned A.P.P. submits that even the C.C. T.V. footage points out the involvement of present applicant in the crime. The learned A.P.P. submits that ocular evidence prevail over the medical evidence and during the course of trial, the said submissions can be considered.

5. On careful perusal of the charge sheet, it appears that there is strong *prima facie* evidence against the applicant showing his involvement in the crime. During the course of investigation, statements of eye witnesses came to be recorded. Sanjay Keshav Sapkale, Shamrao Dasu Surwade, Arjun Sapkale are the eyewitnesses to the incident. According to them, the companion of the applicant/accused, at his instance, took out a knife from the dickey of motor cycle and handed it over to the present applicant-accused. Thereafter, the applicant-accused started giving blows with big knife on the person of Anil Keshav Sapkale. Some of the witnesses have witnessed the incident at some later stage when they noticed that deceased Anil Sapkale was lying on the ground and the applicant accused was giving blows of big knife by sitting on his person. In the *postmortem* notes, particularly in column No.17, the description of the *anti mortem* injuries is mentioned as "all wounds cutting deep structures and with smooth and sharp margins". Even

considering this *prima facie*, I do not find any inconsistency in the ocular evidence and medical evidence, as such. However, the prosecution may establish the same only after examining the concerned doctor who has conducted the *postmortem* examination. In view of the above, the applicant is not entitled to be released on bail. Hence, the following order:-

ORDER

Application is hereby rejected.

(V. K. JADHAV, J.)

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