

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3236 OF 2016

Balaji s/o. Muttelu Yemalwad .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Dhananjay M. Shinde, Advocate for the applicant.
Mr. S.P. Sonpawale, A.P.P. for respondent/State.

**CORAM : A.M. BADAR, J.
DATED : 15.10.2016**

P.C. :-

1. The applicant/accused in Crime No. 75 of 2015, registered with Umri Police Station, Dist. Nanded, for offences punishable under sections 302 and 201 read with section 34 of the Indian Penal Code, by this application, is seeking his release on bail, after filing of the charge-sheet.

2. Heard learned Counsel for the applicant/accused. He argued that death of Ganpat occurred in between 03.06.2015 and 04.06.2015. In the accidental death case of Ganpat, his mother and other relatives have given

statements, wherein they have not disclosed that deceased Ganpat was in the company of co-accused. In those statements, it was reported that deceased Ganpat had left Umri for Aurangabad. Learned Counsel argued that subsequently the prosecution has concocted the story and falsely implicated the applicant as well as co-accused in the crime in question. He argued that the statement of Sangita recorded on 03.09.2015 shows that, from the informant she came to know that co-accused Subhash and Suresh as well as other accused persons committed murder of Ganpat; whereas the F.I.R. lodged by Dhondabai, does not disclose this fact. Learned Counsel further argued that the statement of alleged eye-witness was recorded belatedly i.e. on 08.09.2015 and till then he had not reported the matter to police. In the supplementary statement, this witness has added embellishment to his original version and therefore the entire prosecution case is false.

3. Learned A.P.P. opposed the application by contending that the statement of eye-witness Maruti is corroborated by the statement of waiter of the hotel. Learned A.P.P. drew my attention to statements of other witnesses disclosing the fact that the deceased was in the company of co-accused.

4. I have carefully considered the rival submissions and perused the charge-sheet annexed to the application. Ganpat Yemalwad (since deceased) had been to Umri from Aurangabad and in the report lodged by his mother on 01.09.2015, the informant Dhondabai averred that in the evening hours of 03.06.2015, Ganpat left the house by taking a hen with him with co-accused Subhash and Suresh for enjoying a party. In the initial version of the informant recorded in accidental death case, it was reported that her son Ganpat left Umri for going to Aurangabad on 03.06.2015.

5. The prosecution is relying on the statement of Maruti – driver of auto rickshaw recorded on 08.09.2015. The statement of this witness shows that on 03.06.2015 he was hired by Maruti Yemalwad and he drove Maruti, Ganesh and one of their friends from Golegaon to Nimtek Pati. There, Ganpat Yemalwad (since deceased), Subhash and Suresh joined them. They all initially went to road side eatery of one Pande and thereafter to the eatery of one person named Mama. Maruti had disclosed that at the eatery of Mama, a hen brought by Ganpat was cooked and they all including Ganpat consumed liquor. After having dinner at that eatery, as per version of Maruti, he drove them all towards Waghala road. There he was directed to stop the auto rickshaw and by taking Ganpat, all accused

persons went to adjoining field. Maruti stated that because of booze session at the eatery, Ganpat was in intoxicated condition and he was unable to walk. As per version of Maruti, accused persons then killed Ganpat in that field. He alleged that the present applicant had assaulted Ganpat by means of a punch whereas others assaulted him by means of iron rod, katti and stones. Accused persons then took an amount of Rs.70,000/- which was with Ganpat and thereafter the dead body was taken to railway track. Maruti has disclosed that he was threatened with life by accused persons after commission of this crime. The statement of this witness is also recorded by the prosecution under section 164 of the Cr.P.C., wherein some detailed facts are stated.

6. The effect of delay in recording the statement of this statement will have to be considered at the trial of the case, by examining this witness as well as the investigator. Prima facie, it is seen from his statement that the applicant/accused was involved in the crime in question. The statement of Maruti is gaining corroboration from statement of Vinod Renewad, the waiter at the eatery, who has disclosed that deceased Ganpat along with other persons had been to the eatery where they drank liquor and had dinner. Vinod had identified the deceased by looking at his photograph.

7. In this view of the matter, no case for bail is made out. The application is rejected.

[A.M. BADAR, J.]