

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

**Criminal Application No. 3247 of 2016**

|                       |
|-----------------------|
| District : Ahmednagar |
|-----------------------|

Dnyaneshwar Thaka Kolpe,  
Age : 31 years,  
Occupation : Agriculture,  
R/o. Paylat, Kolpewadi,  
Taluka : Kopargaon,  
District : Ahmednagar. .. Applicant.

**versus**

The State of Maharashtra. .. Respondent.

.....

*Mr. Shivraj B. Kadu, Advocate, for the applicant.*

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for  
the respondent.*

.....

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

**DATE : 19TH AUGUST 2016**

**ORAL ORDER:**

The applicant / accused in Crime No. I-03/2016, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, registered with Kopargaon Taluka Police Station,

District Ahmednagar, at the instance of Santosh Vitthal Kolpe, by this application, is praying for releasing him on bail.

2. Heard the learned Counsel appearing for the applicant as well as the learned Addl. Public Prosecutor appearing for the respondent.

3. The learned Counsel for the applicant argued that the case of the prosecution is based on circumstantial evidence in which many links are missing.

4. The learned Addl. Public Prosecutor opposed the application by drawing my attention to the statement of the mother of the applicant and deceased Lunya @ Mangesh Kolpe. The learned Addl. Public Prosecutor further argued that during investigation, weapon of the offence came to be seized at the instance of the present applicant.

5. Perused the charge-sheet. The FIR is lodged by Santosh Kolpe. He is not an eye witness to the incident in question. He saw dead body of Lunya @ Mangesh lying on heap of cow-dung near house of the deceased.

6. According to the prosecution case, as reflected from statement of several witnesses, Lunya

@ Mangesh (since deceased) was in habit of consuming liquor and abusing the members of his family as well as others under influence of liquor. The applicant is real brother of deceased Lunya @ Mangesh Thaka Kolpe. Statement of Jamunabai, mother of the deceased as well as the present applicant, goes to show that on 03.01.2016, at about 08.30 p.m., deceased Lunya @ Mangesh returned to their house under influence of liquor and started ransacking the house by demanding money. Looking at the aggressive behaviour of Lunya @ Mangesh, his family members left the house and took shelter in the neighbourhood. Subsequently, Lunya @ Mangesh was found dead in the heap of cow-dung near his house. His dead body was inside a sack.

7. Case of the prosecution is based on circumstantial evidence. The circumstances which can be culled out from the charge-sheet is recovery of weapon used in alleged offence i.e. a wooden log, at the instance of the present applicant. The next circumstance which may be pressed in service, is last seen together. However, statement of witnesses goes to show that because of his habit of consuming liquor and creating nuisance under intoxication of liquor, the deceased was not in good terms with residents of the village as well as his family members. The circumstances, which can be reflected from the charge-sheet, in my opinion, are not making out prima

facie case for the offence punishable with death sentence or life imprisonment.

8. Hence, as the investigation is over, liberty of the applicant needs to be restored to him till conclusion of trial and, therefore, the following order :-

(a) The application is allowed.

(b) The applicant / accused, in the above crime, be released on bail, on his furnishing P.R. Bond in the sum of Rs. 10,000/- and one or more solvent sureties of the like amount.

(c) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(d) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial.

(e) The applicant shall not repeat commission of similar type of offences in future.

9. The Application stands disposed of in the aforesaid terms.

( A.M. BADAR )  
JUDGE

.....