

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

914 CRIMINAL APPLICATION NO. 4729 OF 2016

SURESH HIRAMAN RATHOD

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. Joydeep Chatterji, Advocate for Applicant.

Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 30th AUGUST, 2016

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PER COURT :

1. Applicant Suresh s/o Hiranman Rathod, who is an accused in Crime No. 80/2016 registered at Naldurg police station, Dist. Osmanabad for the offences punishable u/ss 302,324,109 read with 34 of the Indian Penal Code at the instance of Prakash Motiram Rathod by this application is praying for releasing him on bail after filing of the charge sheet.

2. Heard learned counsel for the applicant. By drawing my attention to the statement of Bharatbai and Babu Rathod, he argued that there was quarrel between cousins and during the course of that quarrel, according to the prosecution

case, present applicant had given one blow of handle of the spade to his uncle Motiram Rathod causing his death. Therefore, according to the learned counsel for the applicant, *prima facie* it can not be said that the applicant was having intention as well as knowledge of death of Motiram Rathod.

3. Learned A.P.P. opposed the application by contending that the offences are serious and the prosecuting party as well as accused persons are residing in the same village having agricultural lands in the neighbourhood. Therefore, there is possibility of tampering of the evidence of the prosecution.

4. Perused the charge sheet. The crime in question is registered at about 4.56 p.m. on 13/04/2016 at the instance of Prakash Rathod, son of deceased Motiram Rathod. The incident allegedly took place at about 9.30 a.m. on 12/04/2016. In the F.I.R. itself, informant averred that initially he had disclosed to police that his father Motiram Rathod sustained injuries because of fall due to giddiness while undertaking agricultural operations.

5. Be that as it may, statements of informant Prakash and his brothers Kisan and Anil consistently show that on 12/04/2016, because of entry of bullock in the field of cousin branch of the prosecuting party, there was quarrel between the informant Prakash Rathod and his cousin/accused Anil Rathod. Other family members of cousin branch of informant also joined in that quarrel. It is seen from the charge sheet

that, at that time, for assaulting the informant and his brothers, accused persons had not used any weapon. Then, as seen from the charge sheet, accused Anil Rathod – cousin of informant Prakash hit Prakash Rathod by stone and then Motiram Rathod [deceased], father of the informant Prakash tried to intervene. When he was approaching the quarrel, his nephew Suresh Rathod – present applicant, hit Milind Rathod on head by the handle of spade causing his fall. According to the prosecution case, then Suresh Rathod – present applicant assaulted his uncle Motiram Rathod by means of elbow. It is thus clear from the statement of witnesses that single blow of handle of spade was given by the present applicant to his uncle Motiram Rathod.

6. Postmortem report shows that Motiram Rathod died because of head injury. Injuries suffered by deceased Motiram Rathod are in the nature of contused abrasion and injury No. 6 which was caused by the handle of spade having size 6 x 5 cm. on left side temporo-occipital region.

7. In the light of eye witness account coming from the mouth of sons of deceased Motiram Rathod, statements of neighbourers will have to be examined. Babu Rathod and Bharatbai Pawar, who are neighbourers had rushed to the spot after hearing sound of commotion. Both these witnesses stated that there was quarrel between sons of Hiranman Rathod and sons of Motiram Rathod when they reached the spot. The informant has stated the reason for quarrel as entry of bullock in the field of Hiranman Rathod. *Prima facie*, as such, it is seen

that the incident took place all of a sudden and during that incident, single blow of handle of the spade was given by the applicant to the deceased Motiram Rathod. The question at the trial would be by giving single blow, whether the present applicant intended to cause death of his uncle Motiram Rathod and whether he was having knowledge that giving such a blow would result in homicidal death of his uncle Motiram Rathod.

8. In the wake of the foregoing reasons and considering the nature of evidence against the present applicant, his further pre-trial detention is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Suresh s/o Hiranman Rathod in Crime No. 80/2016 registered at Naldurg police station, Dist. Osmanabad for the offences punishable u/ss 302,324,109 read with 34 of the Indian Penal Code be released on bail on executing P.R. Bond of ₹ 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of

the prosecution.

(v) The applicant should not repeat commission of offence of similar nature in future and particularly he should not contact in any manner the prosecution witnesses including his cousin brothers.

(vi) Applicant shall co-operate the trial Court in the expeditious disposal of trial against him.

[A.M.BADAR, J.]