

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

28 CRIMINAL APPLICATION NO. 4971 OF 2016

BANDU S/O PANDHARI BUGE

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Sagar Killarikar Balaji L., Advocate for Applicant.

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

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CORAM : A.M.BADAR, J.

DATE : 19th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 191/2016 registered at Omerga police station, Dist. Osmanabad for the offences punishable u/s 302 of the Indian Penal Code, by this application is praying for releasing him on bail after filing of the charge sheet.

2. Heard the learned counsel for the applicant. By taking me through the annexures to the application, the learned counsel argued that the incident allegedly took place on 21/10/2015 and the same came to the notice of the informant after she returned to the house from the field. The learned counsel further argued that then Shivaji [since

deceased] was taken to the private hospital and after getting treatment, he was brought back to the house. Then, in the night hours he was again taken to the hospital, where he died on 22/10/2015. The learned counsel by drawing my attention to the Inquest panchanama submitted that there was no external injury on the dead body. By drawing my attention to the postmortem report, he further argued that the autopsy surgeon opined that Shivaji died because of cardio respiratory arrest due to Hypovolemia due to rupture of Heart, Liver and Spleen. The learned counsel argued that Hypovolemia might have been caused because of dehydration and the injured might have been died because of heart attack. Therefore, in submission of the learned counsel for the applicant, further pre-trial detention of the present applicant is not warranted, as prior to trial, every accused is considered as innocent.

3. The learned A.P.P. opposed the application by drawing my attention to the injury certificate of the deceased disclosing that the deceased has suffered blunt chest trauma. The learned A.P.P. took me through the statements of witnesses recorded by the Investigating Officer and submitted that the autopsy report further shows that ribs of the deceased were fractured.

4. Perused the charge sheet as well as the annexures to the application. The F.I.R. of the crime came to be lodged by Rukhminibai Shivaji Itubone, widow of deceased Shivaji. The crime in question was registered on account of death of Shivaji.

5. Perusal of the charge sheet reveals that Shivaji had made oral dying declaration to his wife as well as to his other family members. Their statements are recorded by the Investigating Officer. The charge sheet reveals that deceased Shivaji had declared his widow and his relatives that on 21/10/2015 at about 4.00 p.m. when he was sitting in the Samaj Mandir, the present applicant came and questioned him by alleging that why he unnecessarily speaks with his wife. Then, according to the declarant, the present applicant pitted him against the wall of Samaj Mandir and started giving kick blows on his abdomen and chest.

6. It is seen from the charge sheet after giving first aid, in that night itself, deceased Shivaji was admitted to the hospital. He succumbed to the injuries on the next day. The dead body was then dispatched for autopsy.

7. Perusal of the report of postmortem examination shows that deceased Shivaji had suffered C.L.W. at base of the nose apart from fractured ribs. It is seen from the report of the postmortem examination that 9th, 10th, 11th and 12th ribs of left side of deceased Shivaji were fractured. There was contusion to his chest. His Pleura was found punctured. Left ventricle of the Heart was also found punctured. His Liver was also found to be ruptured, so also his Spleen. After autopsy, the Surgeon reported that Shivaji died due to cardio respiratory arrest due to Hypovolemia due to rupture to Heart, Liver and Spleen. This obviously makes it clear that the deceased died homicidal death.

8. The question would be whether by such death, it can be said *prima facie* that the present applicant committed murder of Shivaji. Section 300 of the Indian Penal Code defines murder. If the act is done with an intention of causing death or with an intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused, then the offence of murder is established. Extensive internal injuries in the nature of rupture of Liver, Spleen and Pleura apart from punctured Heart shows the force of kicks blows given by the applicant while pitting the deceased against the wall. This act *prima facie* reflects intention as well as knowledge of causing the death.

9. The constraint of Section 437 are to be read down even while considering the application u/s 439 of the Code of Criminal Procedure. In the case in hand, the evidence indicates commission of murder. This offence is punishable either with death or life imprisonment. In this view of the matter, no case for bail is made out. Hence, the following order.

(i) The Criminal Application stands rejected.

[A.M.BADAR, J.]