

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

**Criminal Application No. 5338 of 2016**

|                   |
|-------------------|
| District : Nanded |
|-------------------|

Kanthiram s/o. Subhan Jadhav,  
Age : 49 years,  
Occupation : Agriculture,  
R/o. Kiroda,  
Taluka : Loha,  
District : Nanded. .. Applicant.

**versus**

The State of Maharashtra. .. Respondent.

.....

*Mr. N.C. Garud, Advocate, for the applicant.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for  
the respondent.*

.....

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

**DATE : 28TH SEPTEMBER 2016**

**ORAL ORDER:**

The applicant / accused in Crime No. 90/2016 registered with Police Station, Loha, District Nanded, for the offence punishable under Section 302 of the Indian Penal Code, by this application, is seeking his release on bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant - accused. The learned Counsel for the applicant argued that motive attributed to the applicant for commission of the crime in question is demand of money from the deceased. It is argued that the applicant is a Ex-Serviceman receiving handsome pension and his siblings are also well settled in life. Therefore this motive is false. It is further argued that the applicant is falsely implicated in the case because of political rivalry on account of election of the Society. The learned Counsel for the applicant argued that the case is based on circumstantial evidence and the evidence is hearsay. Witnesses are disclosing different timings. Chemical Analyzer's report is not supporting the prosecution case. Clothes were not found to be stained with fresh blood. The deceased was an anti-social element having so many enemies and therefore, possibility of committing the offence by somebody else cannot be ruled out. The learned Counsel for the applicant drew my attention to statements of several witnesses including Raoji Jadhav, Hari Jondhale, Ramesh Jadhav and Daulat Jadhav, to point out that they all had stated different timings.

3. The learned Addl. Public Prosecutor opposed the application.

4. Perused the charge-sheet. According to the

prosecution case, applicant Kanthiram Jadhav had committed murder of Kisan s/o. Bhojaji Jadhav on 13.05.2016. The FIR of the crime in question is lodged by grandson of the deceased named Gajanan s/o. Sanjay Jadhav on 13.05.2016 itself.

5. Evidence of the prosecution in this case is consisting of eye witness account, oral dying declarations as well as pre-event and post-event conduct.

6. Sluggish chronometric sense of rustic villagers is noted in several judicial pronouncements. In the case in hand, the incident in question took place in Kiroda village of Loha Taluka in Nanded District. In the case in hand, witnesses appears to be rustic villagers. The learned Counsel for the applicant had not pointed out what is the different timings stated by the witnesses. On the contrary, timings stated by several witnesses are different because they are deposing about pre-event conduct, conduct at the time of happening of the incident and post-event conduct. Therefore, timings are bound to be different and no capital can be made out of this fact.

7. Hari Jondhale is an eye witness to the incident in question. His testimony before the Investigation Officer shows that on 13.05.2016, he

had seen the applicant assaulting Kisan by means of stick and stone. Raoji Jadhav is a witness who had seen pre-event happening. His version shows that on 12.05.2016 at about 09.00 p.m., he saw the applicant quarreling with Kisan (since deceased). Statement of Daulat Jadhav appears to be in respect of pre-event happening.

8. Informant Gajanan Jadhav, witnesses Gopinath Jadhav, Maroti Mane, Ramesh Jadhav and Bhimrao Jondhale are vouching about oral dying declaration of deceased Kisan. In unison they have stated that deceased Kisan had disclosed them that the present applicant had assaulted him.

9. When there is eye witness account of the incident in question, evidence in respect of motive is of no consequence. Even otherwise all witnesses are stating that the applicant demanded money from the deceased and on his refusal, had assaulted the deceased. The death is obviously homicidal, as seen from the report of post mortem examination. There were about 12 ante mortem injuries on the dead body. The dead body was also having internal injuries to head as well as ribs.

10. Considering overwhelming evidence against the applicant for the offence which is punishable with death or life imprisonment, no case for bail is

made out.

11. The Application is accordingly rejected.

12. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

( A.M. BADAR )  
JUDGE

.....