

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

CRIMINAL APPLICATION NO. 5697 OF 2016
IN
CRIMINAL APPEAL NO. 586 OF 2016

Samadhan S/o Shankar Sapkale .. Applicant

Versus

The State of Maharashtra. .. Respondent

.....
Mr Joydeep Chatterji, Advocate for the applicant
Mr R. B. Bagul, APP for respondent/State
.....

CORAM : V.L. ACHLIYA, J.
DATED : 25.10.2016.

PER COURT :

. The applicant has moved this application seeking bail on the grounds as set out in the said application.

2. The applicant was tried for committing offence u/s 302, 323, 504 and 506 of the Indian Penal Code. On conclusion of trial, ld. Sessions Judge has convicted the appellant u/s 304 Part II, 323, 504 and 506 of the Indian

Penal Code. For committing offence u/s 304 Part II of the IPC, the applicant is sentenced to suffer rigorous imprisonment for 7 years and pay fine of Rs. 1,000/-, in default, to undergo simple imprisonment for 3 months. Separate sentences have been awarded for offences other than Section 304 Part II of the Indian Penal Code and sentences have been ordered to be run concurrently.

3. Mr. Chatterji, learned counsel for the applicant strenuously contended that, there is no cogent, convincing and reliable evidence to establish the complicity of the accused in commission of offence. He submits that, no independent witness was examined as a witness to the incident. The witnesses examined by the prosecution are closely related persons. He further submits that, there was no motive of the applicant to assault the deceased. There are number of circumstances brought on record which raises doubt as to the presence of alleged eye-witnesses at the time of the incident. He further submits that, during the trial the applicant was on bail. The sentence awarded is of seven years and it will take long time to list the appeal for final hearing. He, therefore, prays for release of the applicant on bail during the pendency of the appeal.

4. On the other hand, learned APP strongly opposed the application with contention that the prosecution has adduced cogent, convincing and reliable evidence to establish the complicity of the accused in commission of offence. The accused was tried for committing offence of murder. However, trial Court has convicted the appellant for offence of Culpable Homicide not amounting to murder. He further submits that, the possibility of applicant may abscond cannot be ruled out as the applicant has no deep roots in the society.

5. Having appreciated the submissions advanced in the light of the impugned judgment & order and the evidence as adduced, I am of the view that, during the pendency of the appeal applicant deserves to be enlarged on bail. Although the applicant is tried for offence u/s 302 of the IPC, trial Court held the applicant guilty of offence u/s 304 Part II of the IPC and sentenced to suffer rigorous imprisonment for 7 years. It appears that, the assault was not premeditated. No weapon was used in commission of offence. As per the prosecution case, the accused has banged head of deceased against the stone which resulted into causing alleged injuries which has resulted into his death. Therefore, considering the over all evidence, the nature of offence proved

against the applicant and further the applicant was on bail during the trial, I am inclined to allow this application. Hence, the following order.

ORDER

- (I) Pending disposal of appeal, the substantive sentence of imprisonment stands suspended from the date of release of the applicant on bail.
- (II) Pending disposal of appeal, the applicant be released on his furnishing bail in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one surety in the like amount on following conditions.
 - (i) Applicant shall visit and record his attendance with Jalgaon Taluka Police Station on every last Sunday of each month in between 10:00 a.m. and 11:00 a.m., till disposal of the appeal.
 - (ii) Applicant shall furnish the names, addresses and phone numbers with residential proof of his three close relatives.
 - (iii) The applicant shall not leave the local limits of Jalgaon District without seeking prior permission from the Court.

- (iv) The applicant shall not indulge into any criminal activities during the pendency of Appeal.
- (v) In the event of change in address, the Applicant shall inform the concerned Police Station as well as information to that effect be given to the Court.
- (III) The officer concerned of Jalgaon Taluka Police Station shall send quarterly report to this Court about observance of conditions of bail by the accused. In case of non-observance of the conditions of bail as above, the officer in-charge shall move the Court for cancellation of bail.
- (IV) Bail to be furnished in the trial Court.

. Criminal Application stands disposed of accordingly.

[V. L. ACHLIYA]
JUDGE