

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

CRIMINAL APPLICATION NO.6097 OF 2015 IN
CRIMINAL APPEAL NO.838 OF 2015

Bhatusing Virangya Ravatale & others ... APPLICANTS

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri S.S. Savale, Advocate for applicants
Shri R.V. Dhasalkar, A.P.P. for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 27th June, 2016.

ORAL ORDER :

1. Heard Mr. Savale, learned counsel for the applicants - original accused, who were tried for offence under Section 302 of the Indian Penal Code and came to be convicted under Section 304 (I) read with Section 34 of the Indian Penal Code.

2. Learned counsel for the applicants submitted that, as per the case of prosecution, in the present case, the assault took

place and the victim Vinod Ravatale was injured and he died after 3-4 days. According to the counsel, the dying declaration was treated as complaint. Police witness, who recorded the dying declaration, admitted in cross-examination that, endorsement of doctor was not taken on the dying declaration. The learned counsel submitted that, this is a fit case for grant of bail. There was no eye witness of the incident. It is stated that, P.W.2 Nitesh had not actually seen the incident and had reached the spot after the incident. The counsel submitted that, the applicant No.1 is aged person and applicant No.1 should at least be released on bail.

3. Against this, the learned A.P.P. submitted that, the case of prosecution shows that, the complainant was called in the house by the accused persons and was assaulted in the house by means of stick. It is pointed out that, one of the injury was so grievous that the complainant - victim expired. There was snapping of c-4 c-5 vertebra with spinal cord compression resulting into death. According to A.P.P., the conviction is under Section 304(I) of the Indian Penal Code and in addition to the dying declaration, there was evidence of P.W.2 Nitesh available, which shows that he had seen the accused persons assaulting the

victim.

4. Having gone through the appeal and original record available, it can be seen that, the applicants were charged for offence under Section 302 of the Indian Penal Code. In the record of the trial Court, the F.I.R. is at Exh.32. The document Exh.32 does bear endorsement of the Medical Officer and when this is so, withholding the document, admission is taken regarding the endorsement. That cannot be of much help. The applicants were in custody even during the course of trial and now the applicants are convicted accused persons. They have been convicted with serious offence like Section 304(I) of the Indian Penal Code. Looking to the reasons recorded by the trial Court while considering the evidence, which has come on record, prima facie it appears that, the State has brought a good case against the applicants - accused. The learned counsel for the accused, of course is arguing that the applicants have good case for acquittal, but the matter will require time for the appeal to be decided.

5. Looking to the prima facie material, it does not appear to be appropriate that the applicants should be admitted

to bail. The age of applicant No.1 would not be reason to admit him to bail in appeal after he has been convicted and when he was in custody even during the course of trial.

6. The learned counsel for the applicant, during the course of dictation of this order, made request and submitted copy of judgment in the matter of **Anil Ari Vs. State of West Bengal.** It appears to be unreported judgment of Hon'ble Supreme Court in Criminal Appeal No.239/2009, decided on 9.2.2009. It is argued that, advance age could be criteria for grant of bail.

7. The present applicant No.1 is stated to be 65 years of age. In the matter which was before the Hon'ble Supreme Court in the case of Anil Ari, the appellant was 70 years of age. The said appellant had been on bail during the trial. The Hon'ble Supreme Court, in para 13, mentioned that on the peculiar facts of the case, considering the age of the accused - appellant, bail was required to be granted. In the present matter, the applicants including the applicant No.1 were not on bail during trial. As such, the matter becomes more difficult when undertrial has been convicted and the appeal is now pending.

8. There is no merit in the application. The application is rejected. However, the appeal is expedited.

9. Paper Book be got prepared urgently.

10. List the appeal on 25th July 2016, by which time the trial court should prepare the Paper Book and send the same to this Court by 25th July 2016. Then the appeal can be fixed for final hearing on date as may be deemed appropriate.

(A.I.S. CHEEMA, J.)

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