

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 335 OF 2016

Jitendra Jibhau Ahire

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Ganesh Gole, Advocate i/by Ritesh Ratnam for the Applicant.

Mr. Arfan Sait, APP for the State.

CORAM : A. M. BADAR, J.

DATE : 21st JUNE, 2016

P.C. :

1 The Applicant/accused in Crime No. I-76 of 2015 for the offences punishable under sections 302, 307, 323, 447, 504, 506 read with 34 of the Indian Penal Code registered with Jaykheda Police Station Tal. Satana, Dist. Nashik, at the instance of informant-Mangesh Omkar Deshle, by this application is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused as well as the learned APP for the State. The learned counsel for the applicant vehemently argued that documents at page 105 onwards obtained by the applicant under the Right to Information Act, go to show that on the date

of incident at 5.30 p.m., Jibhau Mhadu Ahire, who is co-accused in this crime, was admitted in the Rural Hospital, Naampur and was kept in observation for 4 to 5 hours. The documents further reflect that co-accused Jibhau Ahire had suffered CLW over right temporal-parietal region on the date of the incident itself. Learned counsel further argued that the present applicant is an agriculturist, having no criminal antecedents and as the deceased succumbed to the injuries after about 5 days, it cannot be said that the applicant was having intention to cause death to Omkar Bhivsan Deshle. My attention was drawn to the cause of death reflected in the postmortem report.

3 As against this, the learned APP argued that there are several eye witnesses to the incident in question and weapon of the offence was also seized at the instance of the applicant/accused. Learned APP further argued that blood-stained clothes were also seized from the present applicant.

4 Perused the charge-sheet. Perusal of the FIR shows that informant-Mangesh Omkar Deshle is son of the deceased Omkar Bhivsan Deshle. The FIR shows that the incident of assault on Omkar (since deceased) happened at about 6 p.m. on 22.06.2015. It is averred in the FIR that the present applicant, accompanied by his father Jibhau Ahire and brother Dinesh, came to the house of informant - Mangesh

Omkar Deshle and they started abusing Deshle family. It is further averred that they started giving the blows of sticks and axe on the door of the house of the informant. It is further averred in the FIR that Omkar Deshle (since deceased) had opened the door in order to convince the applicant and the co-accused not to indulge in hurling abuses at them. According to the prosecution at that time present applicant-Jitendra had given a blow of axe on the head of Omkar Deshle, causing his fall. Thereafter, co-accused Jibhau and Dinesh had assaulted informant-Mangesh by means of sticks. The informant further averred that he had taken his father -Omkar to the Government Hospital at Naampur and thereafter to private hospital viz. Prayas Hospital, Malegaon.

5 There are eye witnesses to the incident. They are Shravan Digamber Deshle, Jijabai Deshle and Ujjwala Deshle. Statement of these witnesses shows that a blow of axe was given by the present applicant on the head of Omkar Deshle. The charge-sheet shows that Omkar Deshle succumbed to the injuries and PM report shows that he died because of cardiac respiratory arrest due to hypovolaemic shock caused by loss of blood from the brain injuries. The injury certificate of Omkar annexed to the charge-sheet goes to show that he had suffered deep CLW on left tempo- parietal region, linear fracture on frontal bone, deep CLW over left tempo-parietal region and contusion on the left eye. It appears from the injury certificate

that left teeth of the deceased was uprooted. How deceased Omkar had suffered so many injuries though the statement of eye witnesses and the informant is showing that the applicant had inflicted only one blow of an axe to the deceased is the aspect which is not getting any explanation from the charge-sheet.

6 Prima facie, it appears that genesis of the incident is suppressed by the prosecution. Though the incident is alleged to have happened at 6 pm., at the house of the informant. The applicant as well as the informant and the deceased were resident of village Gorane, Tal. Satana, Dist. Nashik. Perusal of the letter of the Rural Hospital, Naampur goes to show that at 5.30 p.m. on the same day i.e. on 22.06.2016, Jibhau was kept by that hospital for observation for deep CLW to his tempo-parietal region. The register maintained in that hospital so also injury certificate issued by said Rural Hospital, Naampur do substantiate this fact. Perusal of the medical case papers of Jibhau Ahire maintained by the Rural Hospital, Nampur shows that the co-accused Dinesh was present there with his father -Jibhau. History of admission of-Jibhau in Rural Hospital, Naampur at 5. 30 pm on 22.06.2015 shows that he came with history of assault by known persons. If co-accused Jibhau and Dinesh were at Rural Hospital, Naampur at 5.30 p.m. due to injury to Jibhau, how they were present at their village for assaulting the prosecuting

party and how Jibhau suffered injuries is again a matter shrouded in mystery.

7 No doubt the effect of suppression of genesis of the incident by the prosecution and consequences thereof will have to be examined at the trial of the matter but considering the nature of the act attributed to the present applicant and the fact that eye witnesses attributed a single blow to him so also the fact that the deceased died after 5 days, his pre-trial detention is not warranted and hence, the following order :-

ORDER

- i. The application is allowed.
- ii. The Applicant/accused in Crime No. I-76 of 2015 for the offences punishable under sections 302, 307, 323, 447, 504, 506 read with 34 of the Indian Penal Code registered with Jaykheda Police Station Tal. Satana, Dist. Nashik, at the instance of informant - Mangesh Omkar Desale, be released on bail during pendency of the trial on execution of P.R. Bond in the sum of Rs. 5,000/- and on furnishing solvent surety in the like amount.

- iii. In addition, Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that the applicant shall not tamper with the prosecution evidence in any manner.
- iv. The Applicant should not commit the offence of similar nature in future.
- v. The applicant should co-operate for expeditious disposal of the trial.

The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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