

Anand

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

BAIL APPLICATION NO.470 OF 2016

Raosaheb Vyanku Waghmode .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.S.S.Shah, Advocate, for the Applicant
Mr.A.Sait, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 15.03.2016

P.C.

. Heard learned counsel for the Applicant
and the learned APP for the Respondent – State.

2. By this Application, the Applicant seeks
his enlargement on bail in connection with C.R.No.
122 of 2015 registered with the Walchandnagar
Police Station, District – Pune, for the alleged
offences punishable under Sections 323, 326, 504 &
506 r/w.34 of the Indian Penal Code.

3. The incident in question has taken place on 28.08.2015. The Complainant is a son of the deceased. According to the Complainant, when he was sitting in the house, alongwith his parents and wife, the Applicant alongwith other co-accused came to the house. He has stated that his sister-in-law (Ashwini) was sitting behind the house, as she was menstruating. It is alleged that when the Applicant questioned the deceased, as to why Ashwini was made to sit behind the house, the Complainant's father replied as to "whether any lady having periods are allowed to sit in the house". It is alleged that the Applicant on hearing the said reply, picked up an iron rod, which was lying at the spot and gave a blow to the deceased on his head. It is alleged that when the Complainant and his mother tried to intervene, the other co-accused abused and assaulted them by fist and kick blows. After the assault on the Complainant's father, all the accused are stated to have fled from the spot. The

deceased succumbed to the injuries after four days.

4. Learned counsel for the Applicant submitted that the incident took place on the spur of the moment and cannot be said to be an intentional and deliberate act. He submitted that the Applicant and other co-accused had not carried any weapon with them, and that the iron rod was picked up from the spot. He submitted that the Applicant is only 19 years of age and that all the other co-accused have been enlarged on bail.

5. Learned APP opposes the Bail Application. He submitted that the Injury Certificate of the deceased dated 29.08.2015 shows that the Applicant had suffered two grievous injuries and two simple injuries. The injuries are as under :-

(i) CLW Head frontal region 6 x 2 x 1 cm

(ii) CLW Left elbow dorsal aspect 1 x $\frac{1}{2}$ x $\frac{1}{2}$ cm

- (iii) Abrasion Right & left toe
- (iv) Head injury. Epidural haematoma
Lt F-P.conventional
Midline shift 7 MN to pt
Sub-dural bleed – Rt temporal
conventional

He submitted that the death of the deceased was due to hemorrhagic shock due to intra-cranial hemorrhage. He submitted that the manner in which the deceased was assaulted shows that the Applicant had the intention to cause the death of the deceased.

6. Perused the papers. The Applicant has been in custody since 02.09.2015. Whether or not the offence would be one punishable under Section 302 of the Indian Penal Code or a lesser offence, is a matter which will be decided by the trial Court. Admittedly, the Applicant was not armed with any weapon, when he went to the spot and that the deceased was assaulted with an iron rod which the Applicant had picked up from the spot.

7. Considering the manner in which the incident has taken place and considering the age of the Applicant, the Applicant is entitled to be enlarged on bail on the following terms & conditions.

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) The applicant shall report to the investigating officer of the Walchandnagar Police Station, District – Pune on the **first Saturday** of every month between **11:00 a.m. to 12:00 noon** till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change

of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear, that the observations made herein, are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy
of this order.

(REVATI MOHITE DERE, J.)