

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.584 OF 2016
IN
CRIMINAL APPEAL NO.35 OF 2015

Shri Gorakshanath @ Balasaheb Jayawantrao Jagtap ... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Rajiv Patil, Sr.Adv. a/w Hrishikesh Giri i/b P.M. Patil for the Applicant
Mr.H.J. Dedia, APP, for Respondent - State

**CORAM: SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: SEPTEMBER 14, 2016

ORAL ORDER (PER MRS.BHATKAR, J.):

1. This bail application is made in this appeal wherein the applicant-accused is convicted for the offence of murder punishable under section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and fine by the judgment and order dated 30.9.2014 passed by the learned Additional Sessions Judge, Pune. The applicant-accused has murdered his real brother Machindra on 13.10.2012. Thereafter, the applicant was arrested and he is in the prison since then.

2. The learned Senior Counsel for the applicant-accused has submitted that there is a discrepancy in the evidence of PW3 Sheelratna Kumbhar, who was present prior to the incident and the evidence of PW4

Subhash Dagadu Jagtap, who was an eye witness to the incident of actual assault. He relied on the evidence of PW5 Amol Balvant Shinde, who performed post-mortem on the body of Machindra and has observed multiple injuries. He submitted that the injuries were caused due to stones and there is neither any stab nor any chop wound. The applicant-accused was not carrying any weapon. The eye witness PW4 Subhash Dagadu Jagtap also did not describe any sharp edged weapon used by the applicant-accused except the stones. He submitted that there was quarrel between the two brothers and the incident had happened. He submitted that the applicant-accused has no criminal record and it is not a case falling under section 302 of the Indian Penal Code. The case in fact is to be covered under section 304 part 1 or part 2.

3. Learned Prosecutor has opposed this application and has submitted that the eye witness PW4 Subhash Dagadu Jagtap has specifically mentioned the presence of the accused and he has seen the accused assaulting the deceased. Thereafter, Machindra died due to multiple injuries.

4. The accused is in the prison since 2012 and will complete 4 years in the prison. We have perused the evidence of the relevant witnesses i.e., PW3 Sheelratna Kumbhar, PW4 Subhash Dagadu Jagtap and PW5 Amol Balvant Shinde. It appears from the evidence that there was a

dispute between the two brothers i.e., the accused and the deceased pertaining to construction on a joint land. The quarrel took place and was going on, which led to the fight between the two brothers wherein the applicant/accused had assaulted the deceased with stones and some weapon. Considering the submissions of the learned Senior Counsel and the evidence of the relevant witnesses and the period of imprisonment so also as there is no possibility of hearing this Appeal in near future, we are inclined to allow this application.

5. Accordingly, the bail application is allowed on the following terms:

- i) The applicant shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty thousand only) with one or two solvent sureties in the like amount;
- ii) The applicant shall attend the concerned police station on the first day of every month between 11am to 2pm;
- iii) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)