

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 971 OF 2016

Anil Achyut Chindarkar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Shirish Gupte senior counsel i/b Mr. Vijay S. Gharat Advocate for Applicant.

Mr. Arfan Sait APP for the State.

Mr. Sagar Lahu Varale, PSI Kudal
Police Station, Sindhudurg.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 19, 2016.

PC :

1) Heard. This is an application under Section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 19/01/2016 in crime no. 7 of 2016 registered at Kudal Police Station for offence punishable under section 302 r/w 34 of Indian Penal Code. Investigation is completed and charge-sheet is filed on 28/03/2016.

2) It is the case of the prosecution that on 17/01/2016, Manjusha Jagannath Chavan lodged a report at the police station that on 17/01/2016, at about 5.45 p.m., her brother-in-law namely Tarachandra informed her that her

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husband Jagannath has been assaulted. She thereafter rushed to Kudal Rural Hospital, where she met friends of her husband namely Siddhesh Parab, Harshad Gavade, Prasad Mahajan who informed her that Jagannath was returning home after playing a game of cricket and had stopped on the way for having a cold drink, present applicant i.e. Pramod Chindarkar came on the spot in his Swift Desire. Thereafter, Pramod and Anil had assaulted on his head with an iron rod and thereafter, they had fled from the scene of offence. Jagannath had died an instantaneous death.

3) The learned senior counsel appearing for the Applicant has drawn the attention of this Court to the post mortem notes and has vehemently submitted that the nature of the injuries would not indicate that the applicant had assaulted the deceased with an intention to cause homicidal death or with the knowledge that it would cause homicidal death. According to the learned counsel, applicant, therefore, deserves to be enlarged on bail.

4) The post-mortem notes would indicate that injuries in column no. 17 are in the nature of depressed fracture on the head, one incised wound and punctured haemorrhage in subarchnoid brain. There is an incised wound on the palm which is about 3. c.m. X 0.2 c.m. which would prima facie indicate

that accused persons were armed with deadly weapons.

5) The learned APP submits that Swift Desire car was seized and there were blood stains in the car.

6) This is a case which rests upon direct evidence. There are more than three eye witnesses in the present case and therefore, the submissions advanced by the learned senior counsel need not be considered at the stage of deciding the application under Section 439 of Code of Criminal Procedure, 1973. It is a settled position in law that ocular evidence would prevail over the medical evidence in all case under Section 302 of the Indian Penal Code and it would not be appropriate for this Court to probe into an enquiry at this stage as to whether an offence under section 302 or 304 Part I or 304 Part II of the Indian Penal Code is made out as this is a matter of inference which has to be drawn at the end of trial.

7) Hence, application being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)