

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

**BAIL APPLICATION NO.628 OF 2016
IN
CRIMINAL APPEAL NO.351 OF 2016**

Jagmohan Jaswantsingh Thakur

.. Applicant/
Accused

V/s.

The State of Maharashtra

.. Respondent

.....
Mr. J.S. Padam, Advocate for the Applicant.
Mrs. Sangeeta Shinde, APP for Respondent - State.
.....

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : AUGUST 11, 2016.

P.C. :

Heard.

2 This bail application is filed by applicant. Appeal was admitted by an order dated 18th July, 2016. Record and proceedings was called for.

3 Learned counsel appearing for applicant has raised issues regarding furnishing of certified copy to the applicant by the trial Court on 18th March, 2016. He submitted that the

observations made in paragraphs 6 and 7, in the said copy, are found to be different than the observations appearing in original copy of judgment signed by the learned 2nd Additional Session Judge, Thane. We compared the certified copy produced by the applicant while filing Appeal. It is noticed that thirteen names of the witnesses were mentioned in paragraph 6 of the certified copy. It is admitted that in this case prosecution examined 10 witnesses. No defence witness was examined. In the original judgment signed by the learned Judge and the certified copy given to the applicant a reference was made to evidence of 13 witnesses.

4 Learned counsel appearing for applicant submitted that except the evidence of P.W.6 Prachi Jaiswal, daughter of applicant-accused, there was no evidence laid by prosecution involving applicant. Even evidence of P.W.6 is a weak evidence. The prosecution places reliance on evidence of P.W.6 for proving extra judicial confession allegedly made by applicant. Learned counsel submits that trial Court discarded recovery of C.C. T.V. footage, C.D.R. Report, C.A. report. Photographs placed on record were not exhibited and proved. Injury certificate issued, after examining the applicant, was also not proved. Though, certain

documents were exhibited that would not mean that they could be read in evidence. Learned counsel referred to statement made by applicant under Section 313 of the Code of Criminal Prosecution. He submitted that applicant is behind bars since the date of his arrest. He is a old person of 65 years of age. He suffered one heart attack and had undergone surgery. His health condition is not good. There is nobody to look after him. Angiography was done and Heart Valve Replacement surgery was done in J.J. Hospital. Medical treatment was provided to applicant while he was in the custody.

5 Learned APP submits that there are circumstances showing involvement of applicant in commission of crime. Applicant being husband of deceased was present in the bed room. He was present in the night when the incident taken place. P.W.1 son of applicant establishes the presence of applicant in the house and particularly in the bedroom. Applicant is responsible for not giving explanation in respect of the injuries suffered by his wife. He submitted that applicant was not on bail during the trial and considering the evidence on record his application deserves to be rejected.

6 We have perused the original record, depositions and judgment of the trial Court for consideration of this application.

7 We do find discrepancies in paragraphs 6 and 7 of the original judgment and the certified copy given to the applicant in respect of the observations made by trial Judge in the said paragraphs of the judgment.

8 On merits we have noticed that following circumstances are brought on record by the prosecution:

- (a) Presence of accused in the house during the night of 6th October, 2013;
- (b) Applicant was residing along with his wife in the same house;
- (c) Applicant was not present in the house when the incident was reported to police;
- (d) Police arrested accused on the same day.

9 Prima facie assessment of the evidence shows that the investigating agency ought to have conducted the

investigation in all its seriousness for brining before the court best possible evidence in support of the prosecution case.

10 From the medical evidence, it is noticed that the deceased was brutally assaulted on vital portion of the body with an intention to kill.

11 Learned counsel appearing for the applicant submitted that the applicant-accused is a old person of 65 years of age. He has heart related problems. The applicant has undergone a heart valve transplant operation. Learned counsel submitted that applicant is behind bar since last three years.

12 The nature of evidence brought on record and the age of the applicant-accused, his health condition contribute in considering his bail application.

13 It is a matter of fact that the appeals, where accused are in jail, are pending for final hearing for near about ten years in this court. Taking into consideration all the relevant factors as stated above, we are inclined to release the applicant on bail.

:: ORDER ::

- (i) The application is allowed;
- (ii) The substantive sentence awarded against the applicant in Sessions Case No.41 of 2014 by the 2nd Additional Sessions Judge, Thane stands suspended, pending hearing and final disposal of the appeal.
- (iii) Pending hearing and final disposal of the Appeal, applicant - Jagmohan Jaswantsingh Thakur is directed to be released on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount;
- (iv) Applicant shall inform his residential address and phone number to the nearest police station and attend the nearest police station once in a month and maintain the record of the same.
- (v) The hearing of the appeal is expedited.

14 Registrar (Judicial-I) of this court shall call for report from the learned Principal District Judge and the learned Judge, who delivered the impugned judgment and order in respect of the discrepancies/observations as pointed out by the learned counsel

appearing for the applicant-accused in respect of different versions in paragraphs 6 and 7 of the judgment signed by the learned Judge and the certified copy made available to the applicant-accused. The report shall be called within four weeks.

15 Stand over for four weeks for direction.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)