

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

CRI. BAIL APPLICATION NO. 1061 OF 2016

Shankar Appaso Chetri

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Satyavrat Joshi, Advocate for the Applicant.

Ms. R. M. Gadhvi, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 13th JULY, 2016

P.C. :

1 The applicant/accused in Crime No. 59 of 2014 for the offences punishable under sections 302, 109, 504, 506 r/w. 34 of the Indian Penal Code, registered with Umadi Police Station, Dist. Sangli, by this application is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. In his submission, role attributed to the present applicant is assaulting the deceased by chain. Learned counsel argued that test identification parade was conducted belatedly and the same is not as per the provisions of the Criminal Manual issued by this court. Instead of six dummy only five dummy were used in the test identification parade.

Learned counsel for the applicant/accused further argued that the post-mortem report does not show any injuries which can be attributable to the use of chain.

3 I have also heard the learned APP for the State. According to the learned APP, inquest notes so also postmortem report shows injuries inflicted by chain. The applicant was identified by the witnesses in the test identification parade and therefore, no case for bail is made out.

4 Perused the chargesheet. The FIR came to be lodged on 05.10.2014 by informant-Archana @ Laxmi Prakash Ghadge. She alleged that on 04.10.2014 at about 7.30 p.m. her husband Prakash Ghadge (since deceased) was called out of the house by Shashikumar Vittal Shitole and thereafter, Prakash Ghadge was assaulted by co-accused - Shashikumar Shitole by knife, whereas the applicant assaulted him by chain.

5 Immediately after arrest of the applicant, on the basis of his voluntary disclosure statement recorded on 07.10.2014, bloodstained knife and bloodstained chain apart from bloodstained cloths came to be recovered. Perusal of the postmortem report shows that apart from stab wounds, multiple linear abrasions and contusions were found on the

back of the deceased. In inquest also injuries which can be attributable to assault by chain are found. The test identification parade was conducted on 18.11.2014 at Tahasil Office. Five dummy were used in that test identification parade in which Prithvi Ghadage and informant - Archana identified the present applicant as one of the assailants. Holding the test identification parade belatedly and consequences of using only five dummy will have to be examined at the time of trial. Identification in test identification parade is primarily for use of the investigator in order to ascertain whether line of the investigation is proper or not. Same can never be considered as substantive evidence. Dock identification is the substantive evidence.

6 Considering the material collected by the prosecution which prima facie connects the applicant to the offence punishable under section 302 of the Indian Penal code. No case for bail is made out.

7 In the result, bail application is rejected. Needless to mention that all these observations are prima facie observations having no bearing on the trial.

(A. M. BADAR, J.)

.....