

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

CRI. BAIL APPLICATION NO. 1127 OF 2016

Suraj Chandrakant Shinde ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Abhaykumar Apte, 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. 69 of 2015 for the offence punishable under section 302 of the Indian Penal Code, registered with Vadgaon Maval Police Station, Dist. Pune, at the instance of informant-Sau. Laxmi Chandrakant Shinde, by this application is praying for releasing him on bail.

2 Heard the learned counsel appearing for the applicant/accused. By taking me through the entire text of the FIR lodged by Laxmi Shinde, who is wife of the deceased and mother of the present applicant, learned counsel for the applicant argued that deceased-Chandrakant Shinde was in habit of excessive drinking of liquor and he used to assault and abuse inmates of the house. It is argued that on

16.3.2016, deceased -Chandrakant had not even permitted the informant and the present applicant to go for their work. By reading out the averments in the FIR, the learned counsel for the applicant argued that incident and the act alleged against the present applicant, is prima facie, happened because of the acts of sustained provocation by the deceased and as such the offence alleged does not fall under section 302 of the Indian Penal Code. He further argued that evidence regarding discovery is suspect, as the applicant did not flee from the spot of the incident.

3 Learned APP for the State opposed the application by contending that the offence alleged is grave and there are statements of witnesses to corroborate the version of the informant.

4 Perused the chargesheet including the FIR lodged by informant-Laxmi Shinde. It is seen from the FIR that apart from the applicant and the informant, there were other inmates of the house such as father-in-law-Pandurang Shinde. It is seen from the FIR lodged by the widow that the her deceased husband-Chandrakant was addicted to liquor and therefore, was not doing any work for earning livelihood. FIR shows that deceased-Chandrakant was consistently demanding money to consume liquor and that he used to be under intoxication of liquor throughout. FIR reveals that on 16.03.2015,

Chandrakant Shinde had consumed liquor in the morning hours itself. FIR further shows that in the afternoon, the deceased consumed liquor on two or three occasions. Subsequently, at about 7 p.m. Chandrakant Shinde again drank liquor and returned to the house with knife in his hand and scissor in his pocket. Thereafter at about 8.30 p.m., under the influence of the liquor he wielded knife at the informant and while the informant attempted to hold hand of Chandrakant, the informant sustained injury at her little finger of the left palm. Thereafter, as seen from the FIR, present applicant-Suraj Shinde snatched knife from the hands of his father-Chandrakant Shinde. Mere snatching of knife from his hand caused fall of Chandrakant Shinde on sofa kept in the room. Thereafter, as seen from the FIR, applicant-Suraj gave blow of knife at back ribs of Chandrakant.

5 It is seen that Chandrakant Shinde died instantly. The cause of death is hemorrhagic shock due to injury to intra abdominal vital organs and due to deep stab injury in left mid-axillary line. Perusal of the postmortem report shows that the dead body was having five incised wounds at neck and one deep stab wound on the midarillage line.

6 With this, let us prima facie, examine whether it can be said that the incident in question happened because of grave and sustained provocation to the applicant at the

instance of deceased-Chandrakant Shinde. At this stage, it needs to be mentioned that in a case of grave and sudden provocation one has to see whether a reasonable man belonging to the same class of the society, as of accused, placed in the situation in which the accused was placed, would be so provoked to loss his control. In any case recitals in the FIR itself go to show that deceased- Chandrakant Shinde was intoxicated and he drank liquor throughout the day. The FIR itself goes to show that mere snatching of knife from the hand of the deceased cause his fall on the sofa. In these circumstances, it cannot be said that there was an imminent threat because of grave and sustained provocation at the instance of the deceased either to the informant or to the applicant. Even postmortem report shows that deceased was averagely built human being.

7 Nature of the injuries, number of blows and the circumstances in which the assault was made on the deceased does not allow me to prima facie hold that the incident was the outcome of grave and sustained provocation.

8 In the result, no case for bail is made out. the application is rejected.

(A. M. BADAR, J.)

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