

nsc.

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

CRIMINAL BAIL APPLICATION NO.1663 OF 2016

Bapu Appa Mangve	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.S.R.Borulkar, a/w Mr.G.M.Savagave, for the Applicant

Ms.Anamika Malhotra, A.P.P for the Respondent-State

Mr.Vijay Khilledar, for the Complainant.

CORAM : REVATI MOHITE DERE, J.
DATE : 16th NOVEMBER, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. This is the second bail application preferred by the applicant. The first bail application, being Criminal Bail Application No.149 of 2016, was permitted to be withdrawn by this Court vide order dated 2nd May, 2016. The said order reads thus;-

*“1. After arguing for some time, learned Counsel
for the applicant seeks leave to withdraw the*

application with liberty to file a fresh application after passage of some time.

2. Accordingly, the application is disposed of as withdrawn with liberty as prayed.

3. It is made clear that if, for no fault of the applicant, the trial does not conclude within a reasonable time, the applicant is at liberty to file a fresh application, which will be considered on its own merits, uninfluenced by the withdrawal of this application.”

3. Learned Counsel for the applicant states that the present application has been filed, pursuant to the liberty granted by this Court, to file a fresh application, after passage of some time. As far as merits is concerned, he submitted that the dispute between the parties who are cousins, was essentially over land. He submitted that the complainant – Kuntinath Mahavir Mangave has in his FIR stated, that the present applicant alongwith co-accused – Ravindra Mangave assaulted the deceased with fist and kick blows and that the other co-accused – Rahul

Mangave pelted a stone on the deceased. He submitted that the applicant is alleged to have assaulted the deceased with fist and kick blows on his person and on his private part, however, the cause of death as reflected in the P.M. Report, is 'due to Haemothorax i.e. injury on the chest.' He submitted that considering the fact, that no weapon was used and the fact that the applicant is aged 68 years old, the applicant be enlarged on bail. He submitted that the trial in the said case has not progressed since May, 2016, inasmuch as, the muddemal has not been produced by the police and that the same is evident from the Roznama.

4. Learned APP opposed the bail application. She submitted that although the complainant has not stated in the FIR that the applicant assaulted the deceased on his chest with fist and kick blows, the fact remains that the applicant has been named in the FIR and that he is stated to have assaulted the deceased with fist and kick blows. She submits that the other eye-witnesses viz., the wife and the daughter-in-law of the deceased and 5 child witnesses have specifically deposed that the applicant had assaulted the deceased on his chest with kick blows. She relied on column no.17 of the postmortem report to show the nature of

injuries sustained by the deceased. She submitted that although no weapon was used, considering the nature of injuries caused to the deceased by the applicant and the other co-accused, it cannot be said that no offence under Section 302 of the Indian Penal Code is made out.

5. Perused the charge-sheet. It is pertinent to note, that the first bail application was withdrawn on 2nd May, 2016. No doubt, liberty was granted to file a fresh application after passage of some time but the second bail application was filed in August, 2016. Passage of 3 months cannot be said to be passage of time. Nevertheless, the application was heard on merits. The complainant has stated that the present applicant alongwith co-accused – Ravindra Mangave assaulted the deceased with fist and kick blows and that the other co-accused – Rahul Mangave threw a stone on the face of the deceased and that later the applicant gave a kick blow on the private part of the deceased. The other eye-witnesses viz., the wife and daughter-in-law of the deceased and the child witnesses have specifically stated that the present applicant assaulted the deceased on his chest with kick blows. A perusal of column 17 of the postmortem report shows that the deceased has sustained as many as 17 injuries.

6. It also appears from column 20 of the P.M. Report that the deceased had suffered depressed chest wall on left side and there was fracture of ribs, 4 to 8 on the left anterior and posterior aspect & fractured segments; and fracture of 4th, 5th to 6th ribs on the right side & profuse bleeding in thoracic cavity on either side, Haemothorax. The cause of death is stated to be 'due to Haemothorax.' It appears that the deceased was aged 63 years and was a well built person and that he was assaulted by the applicant and others mercilessly. It also appears that blood stained clothes of the applicant have also been seized.

7. Considering the nature of allegations, the ocular medical evidence, this is not a fit case to enlarge the applicant on bail.

8. Accordingly, the Application for bail is rejected and disposed of as such. However, the trial of the applicant is expedited. The trial Court shall make an endeavour to conclude the trial, as expeditiously as possible. The prosecution to take effective steps to ensure that all the accused in the said case are produced on all the dates given by the trial Court, so as to enable the trial Court to proceed with the case.

9. Needless to observe, that the trial court shall decide the case on its own merits, uninfluenced by the observations made in this order.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.