

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

CRIMINAL BAIL APPLICATION NO. 1751 OF 2016

Gokul Suresh Shinde.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Vikas B. Shivarkar, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 22, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 26/9/2015 in Crime No. 281 of 2015 registered at Sinnar Police Station, district-Nashik initially for offence under section 325, 324, 323, 504, 506 read with section 34 of the Indian Penal Code. The incident is dated 23/9/2015. The injured Zumber Shinde succumbed to the injuries on

26/9/2015 and hence, section 302 of the Indian Penal Code was added. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 24/9/2015 Zumbar was admitted in Shatabdi Hospital in an injured condition. It appeared to be a medico legal case and hence, his statement was recorded by the police head constable of Sinnar Police Station. He disclosed to the police that on 23/9/2015 he was working in the agricultural land alongwith his other family members. At that time, Suresh Shinde and his son Gokul i.e. the present applicant approached them and questioned them as to why they have encroached upon the boundaries of the agricultural land. There was a verbal altercation and in the said altercation, Suresh has assaulted Zumbar with the butt end of his axe. The present applicant had assaulted him with iron rod on his back, shoulder and on his face. It is also alleged that when Sudam and his wife Mandabai attempted to intervene, they were also assaulted by the accused and Sudam had sustained injury on his

forehead. It is also alleged that the accused had threatened them with dire consequences.

4 The post mortem notes would indicate that the deceased Zumber had sustained bluish black contusion of size 6 cm. x 5 cm. There was no fracture. The cause of death was “combined effect of cerebral and spinovertebral damage due to blunt trauma to head.

5 The learned Counsel for the applicant submits that in fact, there was an altercation between both the groups and that there are eye witnesses to show that in fact, the deceased Zumber has raised quarrel and was armed with axe. As against this, the learned APP submits that it was the pre-meditated act and the applicant and his father had deliberately initiated the quarrel. The applicant is farmer. It appears that there were intermittent quarrels between both the families over boundary dispute. It is true that the verbal altercation had taken ugly turn. However, investigation is completed and charge-sheet is filed and the co-accused Suresh has been enlarged on

bail on medical ground. The role attributed to the present applicant is that he had assaulted deceased Zumbar on his back and on his face. Injury No. 4 is brownish scabbed abrasion, which would show that it was in the process of healing. Taking into consideration the observation in column 20 of the post mortem notes, it prima facie appears that cause of death in all probabilities was due to head injuries.

6 Be that as it may, taking into consideration, the papers of investigation, more particularly, statement of witness and the fact that the investigation is completed and the charge-sheet is filed, the applicant deserves to be enlarged on bail.

7 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

8 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called by the investigating officer and cooperate with the investigating agency to the best of his capacity.
- (iv) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)