

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

CRIMINAL BAIL APPLICATION NO. 1996 OF 2016

Dyaneshwar Kondiba Margale. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Ms. Nagma Tandon, advocate for Applicant.

Mr. Vinod Chate, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 15, 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 29/9/2015 in Crime No. 213 of 2015 registered at Paud Police Station, Pune for

offence punishable under Section 302 of the Indian Penal Code. The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 29/9/2015 Dyaneshwar Nagu Margale lodged a report at the police station alleging therein that on 28/9/2015 the complainant alongwith the other members of the family and his cousin Dhau Laxman Margale and Rambhau Margale had been to the village Tav(Bhordev) and reached there at about 3 p.m. Dhau Margal had gone to leave his mother-in-law at Lavasa. After his return, he met the present applicant and one Padu Zore. His Cousin Dhau Margal had left alongwith the present applicant and had gone to village Vadvali, whereas Padu Zore had stayed at village Tav(Bhordev). That the complainant had called upon Dhau Margale on his cell number. However, the phone was taken by the present applicant who informed the complainant that they were late. At about 10.30 p.m. the present applicant went to the house of the complainant and informed that Dhau has sustained injuries on his head and was lying on the road passing from village

Vadvali to Tav(Bhordev). They all had rushed to the spot. They have seen that Dhau was lying in an injured condition.

4 Initially, he was taken to Apollo Hospital at Lavasa. He was given primary care and thereafter, in the ambulance he was taken to Sahyadri Hospital, Deccan Gymkhana, Pune. He has sustained grievous injuries. The complainant had specifically stated that there were injury marks on his body. Initially, they believed that he had fallen from the hilltop and had therefore, disclosed the same to the doctor. Dhau had expired on 29/9/2015 and thereafter, first information report was lodged and charge-sheet is filed.

5 The papers of investigation would indicate that the injured was taken to Apollo hospital. The history given was unconscious since 2 hours and that the victim was brought by villagers and Rambhau Margale. When the injured was taken to Sahyadri Hospital, the history was stated as alleged history of fall at 8 p.m. yesterday. It is pertinent to note that the word "assault" has been scored of and

written as “fall”. The first informant has also stated initially that on 28/9/2015 he had stated that the injured was climbing down and then he fell on rock. The exact history was not known. The passers by had seen him firstly at around 8.30 p.m. and he was unconscious.

6 Learned Counsel for the applicant vehemently submitted that there is nothing on record to indicate that the injured Dhau Margale had died homicidal death at the hands of the present applicant and therefore, he deserves to be enlarged on bail. The learned Counsel further vehemently submits that there was no motive on the part of the present applicant to eliminate the deceased. It is further submitted that the first informant has also stated that there was some quarrel between the applicant and first informant and other members of the family and the applicant had no role in it.

7 On perusal of the papers of investigation, the Court cannot be oblivious of the fact that the deceased Dhau was in the exclusive custody of the present applicant before he had sustained the head

injury and therefore, only the applicant could not explain the circumstances in which he had died. In any case, the clinical history would show that it was not the applicant, who had seen at the first point of time, but the passers by had seen him at about 8.30 p.m. and had taken him to Apollo Hospital at around mid night. It is pertinent to note that at 10.30 itself, the applicant had informed the first informant that Dhau was lying in an injured condition. At that moment also the applicant had not taken help of the villagers and had neither called for any help. No message was given on cell phone although he had spoken to the first informant an hour before. It is a case of custodial death. The applicant would be liable to explain the circumstance in which Dhau had expired, as contemplated under section 106 of the Indian Evidence Act. Hence, the applicant does not deserve to be enlarged on bail.

8 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.

9 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)