

CRIMINAL BAIL APPLICATION NO. 2026 OF 2016

P.C.:

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 29/11/2015 in
Crime No. 258 of 2015 registered at Mangalwedha Police Station for
the offence punishable under section 302, 307, 109, 506, 201 r/w. 34
of the Indian Penal Code.

3 On 28/11/2015 Bismilla Dilip Nadaf lodged a report at the police station that there was a dispute between her family and the family of the brother of her father-in-law. That on 26/11/2015 family of Bandu Nadaf i.e. the father of the present applicant had attempted to encroach upon the agricultural land of the complainant. Her brother-in-law had shifted the stone to its earlier position. On that count, there was quarrel between both the families and that the present applicant had threatened her mother-in-law that he would eliminate all her sons. Since it was a daily quarrel, no report was lodged in respect of the incident dated 26/11/2015.

4 On 27/11/2015, the husband of the complainant namely Dilip Nadaf alongwith Pundalik Ramchandra Rathod had been to the agricultural land of Vishwas Patane. They were working as labourer. At about 8.30 a.m. Pundalik Rathod called upon the complainant informing her that the present applicant i.e. Saifan Nadaf had assaulted her husband with iron rod(Tommy) and that he has fled from the spot. He had rushed to the spot. However, in the mean

while, the villagers had called for ambulance and had taken Dilip to the Civil Hospital at Mangalweda.

5 On 28/11/2015, the offence was initially registered under section 307 of the Indian Penal Code. Dilip succumbed to the injury on 29/11/2015 and hence, section 302 of the Indian Penal Code was added. The statement of eye witness Pundalik Rathod was recorded on 29/11/2015. He has disclosed to the police that they had gone in the agricultural land of Vishwas Patne as labourer. At that time, they had seen the present applicant standing near well. He was armed with iron rod. Without any prelude the applicant is alleged to have assaulted Dilip Nadaf on his head and had threatened witness Pundalik of the dire consequences. He had immediately informed the wife of Dilip Nadaf about the incident.

6 The post mortem notes would indicate that the deceased had sustained lacerated wound over parietal region, left eyebrow, bone deep, lacerated midline abrasions, head injury sutured. Sutured

wounds were on occipital region, left temporal region and left high parietal region. The injuries were ante mortem. The cause of death is head injury.

7 The papers of investigation would clearly indicate that the applicant herein had mounted assault upon the deceased without there being any prelude. It was a premeditated assault. It is in this circumstance, the applicant does not deserve to be enlarged on bail as there is ocular evidence which is in the form of direct evidence.

8 The learned Counsel for the applicant submits that there is delay in lodging the first information report. The incident had occurred at about 8.30 a.m. on 27/11/2015 and the first information is lodged at 28/11/2015. It is also submitted that the applicant is falsely implicated subsequently and therefore, the delay in lodging the FIR would be fatal to the prosecution. It is also stated that the applicant is a student. The contents of the application would show that the applicant is about 28 years old and is studying in 1st year BA.

The learned Counsel is unable to state the institution, where the applicant is prosecuting his education.

9 Be that as it may, since it is a case of direct evidence and that the applicant had mounted premeditated assault, the applicant does not deserve to be enlarged on bail. In any case, the learned Sessions Judge is requested to make an endeavour to conclude the recording of substantive evidence within one year from the date of framing of charge. The application being sans merits stands rejected.

10 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.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)