

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2795 OF 2017

Govind s/o Madhavrao Subodhi **... Applicant**
Age 40 years, Occu: Business,
R/o Prakash Nagar, Latur,
Tq. & Dist. Latur

VERSUS

The State of Maharashtra, **... Respondent**
Through AUSA Police Station,
District Latur

Mr. Tukaram M. Venjane, Advocate for the applicant
Mr. S. B. Joshi, APP for the State.

CORAM : K. L. WADANE, J.

DATE : 11th July, 2017

ORDER:

1. Heard Mr. Venjane, learned counsel for the
applicant and Mr. Joshi, learned APP for the State.

2. This application is filed under section 439 of
the Criminal Procedure Code for bail in connection with
Crime No.73/2014, registered with AUSA Police Station
Dist. Latur for the offences punishable under Sections
302, 201, 203, 120B, 167, 193, 196 read with section 34
of the Indian Penal Code.

3. According to the prosecution, on 28.07.2012,
deceased Annarao Bansode was riding motorcycle and
present applicant was pillion rider. At about 9.30

a.m., when they reached near Triveni Farm, some vehicle gave dash to their motorcycle, due to which the applicant and deceased Annarao failed down and Annarao died on the spot. Therefore, initially Crime No.87/2012 was registered with Ausa Police Station for the offences punishable under sections 279, 304 A, 337, 338 of the Indian penal Code and under Section 184 of the Motor Vehicles Act. After investigation of the crime, charge sheet was submitted before the learned Judicial Magistrate, First Class, Ausa.

4. Subsequently brother of the deceased namely Bhagwat Bansode lodged complaint with the Ausa Police on 28.04.2014 alleging that the present applicant and other accused persons have committed murder of his brother. On the basis of that information, Crime No. 73/2014 came to be registered with Ausa Police station for the offences Punishable under sections 302, 201, 203, 120B, 167, 193, 196 read with section 34 of the Indian Penal Code.

5. The allegation of the prosecution are that the present applicant and other accused namely Ramesh Viveki have committed murder of deceased Annarao as

there was life insurance policye in the name of Annarao and for taking undue advantage of the policy, the present applicant and other accused persons have committed murder of the deceased Annarao.

6. I have gone through the papers of investigation. It is material to note that initially the case of accident was registered against the unknown persons and after about two years, another crime came to be registered against the applicant and other accused persons. Mr. Venjane, the learned counsel appearing for the applicant submits that earlier Crime No.87/2012 is still pending before the Judicial Magistrate, First Class, AUSA. For the same incident, another crime i.e. Crime No. 73/2014 came to be registered. It means, for a single incident, two crimes are registered and both of them are pending. Therefore, basic controversy is there and therefore, it is necessary to refer to the oral versions of the witnesses and the medical papers.

7. The Medical officer had given opinion of incidental injury in the year 2012 and subsequently, the same Medical Officer has given opinion that such injury will not be possible by accident. This is very surprising to note. Reference has to be made to

the statement of witnesses Dhanaji Pachange whose statement was recorded on 13.09.2012. This witness has stated before the Police that on 28.04.2012, at about 9.00 p.m. he was driving vehicle i.e. Bolero Jeep No. MH-24-V-3472 alongwith family members of his owner. When he reached near Triveni Farm, one Bajaj Platinum Motorcycle struck to the Jeep and person riding the motorcycle and pillion rider were seriously injured. He further stated that case of the accident was registered and flashed in newspaper and there he has not disclosed about the accident to anybody. Exactly opposite to this version, in the year 2014, particularly on 13.07.2014, this witness Dhanaji Pachange has stated that as per the directions given by his employer Anil Patil, he got arrested by the Police in fake accident case. His employer has engaged Advocate and obtained bail. Thus, there are quite contrary statements of one witness. Subsequent version of the witness prima facie appears to be false.

8. The next important aspect is the medical certificate in respect of the present applicant who happened to be pillion rider and the deceased Annarao was driving the motorcycle. From the contents of the medical certificate dated 29.07.2012, it appears that

he was examined at about 2.10 a.m. i.e. early in the morning and following injuries were found: (1) Multiple abrasion over right leg, 4x05 cm (2) Multiple abrasion over forearms 4 x 0.5 cm. Fracture line is noted.

Patient was serious at the time of admission and admitted in T ward and the patient was discharged against medical advice.

9. I have also perused the medical report of the last treating Doctor dated 22.11.2012 i.e. Dr. D. A. Dudde in respect of the deceased. He has opined the exact cause of death i.e. "death may be caused by serious head injury due to road traffic accident. Injuries over head are accidental". Surprisingly, Dr. Dudde had issued another opinion on 19.05.2014, upon the enquiry made by the Investigating officer, that head injury caused to the deceased Annarao Bansode are more likely of physical assault and less likely of accidental. Further, he opined that the injuries present over the head region of the deceased by stone cannot be denied. The same medical officer Dr. Dudde twisted his own opinion so as to suit the case of prosecution. Of course these observations are made prima facie in order to examine the allegation

against the present applicant.

10. Looking to the above circumstance and the fact that in the year 2012 a pure case of Motor Vehicle Accident was registered and subsequently, after about two years, on the basis of information given by the brother of the deceased, offence of murder is registered, I am of the opinion that the applicant is entitled for bail. Hence following order:

O R D E R

- i. The applicant shall be released on bail on his furnishing personal bond of Rs.25,000/-(Rupees twenty five thousand) with one solvent surety of like amount.
- ii. Criminal application is disposed of.

(K. L. WADANE, J.)

JPC