

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

BAIL APPLICATION NO.97 OF 2017

Shri Nilesh Dyanoba Pawar ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.A.P. Mundargi, Sr.Adv i/b Subir Sarkar for the Applicant
Mr.Prashant Jadhav, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 6, 2017

P.C. :

1. The applicant/accused is charged in C.R. No.I-59 of 2016 with the offences punishable under sections 302, 324, 323, 143, 147, 148, 149, 109, 504 and 506 of the Indian Penal Code. It is the case the complainant, one Ayub Harun Pinjari, that on 27.5.2016, that the family of the applicant/accused and the complainant had some land dealings and after construction of a building by the applicant/accused Nilesh Pawar and the co-accused Ganesh Pawar. It was agreed that they would give two shops and one flat to the deceased Yunus Abdul Kadar as a part of his land was taken for the construction of the building and some

amount was also to be paid by the deceased Yunus to the applicant/accused. However, the cheques which were issued by the deceased were dishonoured and the complaint under section 138 of the Negotiable Instruments Act was filed by the applicant/accused against the deceased was dismissed and, therefore, on 27.5.2016 at around 8.45 p.m., the deceased Yunus and his children were celebrating their acquittal with crackers near the building of the applicant-accused. It is the case of the prosecution that after seeing this celebrations, the applicants/accused and the co-accused got enraged and they all arrived there and the applicant-accused armed with iron rod. The co-accused Ganesh Pawar was armed with stick and arrived there with their family members and assaulted Yunus, his son Hyder and other family members with stick, fists and kick blows. The applicant/accused mounted blows with iron rod on the head of Yunus, who succumbed to the said injuries on the same day when he was shifted to Pune hospital, Pune. Thereafter, Ayub Pinjari, the nephew of the deceased, approached the police and offence was registered. The applicant/accused was arrested on 29.5.2016 and hence, this Bail Application.

2. The learned Senior Counsel for the applicant/accused submitted that the incident of assault has taken place because the deceased and his children came in front of the house of the applicant/accused for celebrations and there was verbal alterations which led to physical assault. It was submitted by the learned Senior Counsel that the applicant/accused and his brother Nilesh both were assaulted in the said fight and the applicant/accused approached the police and gave information to the police and offence was registered at C.R. No.58 of 2016 under section 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code against the deceased and his family members, who are the witnesses.

3. The learned Senior Counsel relied on the statements of the witnesses in the said case. He further submitted that it is not the case under section 302 of the Indian Penal Code as the incident took place after sudden quarrel and it is to be reduced to a case under section 304 part II.

4. Learned Prosecutor while opposing the application relied on the statements of the witnesses i.e., Hyder Ali, Yunus Pinjari and his family members. He further relied on the injury certificates, postmortem report which show that the deceased died due to head

injury. He pointed out that the statements of Hyder Ali, Shiraz, the son of the deceased and Reshma, wife of the deceased and Yunus Pinjari are consistent that Nilesh assaulted the deceased with iron rod and he succumbed to the injury. He relied on the postmortem report. He further relied on the observations made by this Court in the order dated 18.11.2016 in Criminal Bail Application No.220 of 2016 wherein the learned Judge has observed that the injuries caused by Nilesh Pawar were fatal.

5. Perused the FIR, the statements of the witnesses and the other documents produced by both the parties. Perused the postmortem, which discloses that the death was caused due to head injury. All the witnesses have unilaterally stated that Nilesh Pawar, the applicant/accused, has assaulted the deceased on his head and it was a fatal blow. While appreciating the case of the applicant/accused, the submissions of the learned Senior Counsel are to be taken into account mainly on two points, that is, the applicant/accused had given FIR on the same day and the offence was registered at C.R. No.58 of 2016 against the deceased Yunus and his family members. The statement of Santosh Sutar, *prima facie*, discloses that there was abusing and scuffle between the

deceased, the applicant/accused and their associates prior to the incident. The incident has taken place in front of the house of the applicant/accused. It shows *prima facie* that it was not a pre-meditated attack but the incident has occurred in a spur of the moment.

6. After going through the statements of Hyder Ali and Shiraz, it appears that both Nilesh Pawar, the applicant/accused and Ganesh Pawar, the co-accused, have assaulted the deceased with iron rod and wooden stick. On query, it is submitted that the applicant/accused does not have any criminal antecedents. Further, chargesheet is filed in the present case. Hence, I grant bail on the following terms:

- a) In the event of arrest, the applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount;
- b) The applicant-accused shall not stay in village Bhor till the trial gets over. He shall attend all the Court dates in the Sessions Court.

- c) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- d) The applicant-accused shall not indulge into any criminal activity especially against human body;
- e) The applicant-accused shall not abscond or leave India without prior permission of the Sessions Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
- f) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

(MRIDULA BHATKAR, J.)