

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.60 OF 2016
IN
CRIMINAL APPEAL NO.78 OF 2016**

Raju Ratansing Pawar ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Veerdhaval Kakade, Advocate for the Appellant.
Ms.A.A.Takalkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 11th APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him before this Court. The applicant/accused has been convicted of the offence punishable under Section 304 part II of the Indian Penal Code ("IPC" for short) and he is sentenced to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.5000/- in default to undergo further rigorous imprisonment for six months.

2 Heard the learned Advocate appearing for the applicant/accused. He vehemently argued that evidence of first informant P.W.No.1 Bheemashankar goes to show that incident in question was earlier reported to police by police Patil of the village and then this witness lodged the FIR at about 7.30 p.m. The learned Advocate further drew my attention to the printed FIR disclosing the fact that the information of the incident was received at the police station at about 18.45 hours i.e. 6.45 p.m. of 22/11/2012. With this, it is argued by the learned Advocate appearing for the applicant that the inquest panchanama shows that it was recorded from 18.15 hours to 19.15 hours i.e. from 6.15 p.m. to 7.15 p.m. of 22/11/2012. According to the learned counsel, this inquest panchanama reflects that the same is recorded in Crime No.153 of 2012 when in fact at the time of starting of recording the inquest panchanama, the crime itself was not registered by the police. This *prima facie points* out that intimation given to the police by the police Patil had in fact resulted in registration of crime, but the prosecution has suppressed that FIR and substituted it with one allegedly lodged by P.W.No.1 Bheemashankar. The learned counsel by placing reliance on the Judgment of the Honourable Apex Court in the matter of ***Sudarshan & Anr. v. State of Maharashtra*** reported in **(2014) 12 SCC 312** argued that one of the external check for the FIR is the inquest panchanama and when the inquest panchanama does not contain any gist of the FIR or the incident, then doubt

creeps in the prosecution case and it indicates that the case of the prosecution at that stage was still in embryo. The learned Advocate further argued that though P.W.No.1 Bheemashankar has deposed that a punctured wound was caused by the accused with the aid of the hand drill, the dead body was not having any punctured wound on it. The forensic evidence is also not supporting to the case of the prosecution.

3 The learned Additional Public Prosecutor opposed the application by contending that there are in all four eye witnesses to the incident in question and as such, the applicant is not entitled for bail.

4 I have carefully considered the rival submissions and also perused copies of depositions of witnesses examined by the prosecution as well as the copy of the Judgment and Order.

5 It is the case of prosecution that the applicant/accused had committed murder of Ambanna Rama Kattimani resident of Jire-Ankalgi, Tal.Indi, Dist.Vijapur. The incident is stated to have happened at village Tadval in Akkalkot Taluka of Solapur District. After trial, the applicant/accused is held guilty of the offence punishable under Section 304 Part II of the IPC and he is sentenced to suffer rigorous imprisonment for ten years by the learned Sessions Judge, Solapur.

6 P.W.No.1 Bheemashankar, P.W.No.3 Maruti Ratnakar, P.W.No.4 Satish Ratnakar, P.W.No.5 Maruti Dhotre and P.W.No.6 Sanjay Abaji, who are resident of village Tadval are eye witnesses to the incident in question. Their version shows that on 22/11/2012 at about 3.30 p.m., they were taking dead body of a Swami for burial and they had noticed the applicant assaulting the deceased by means of fist and kick blows and thereafter with a hand grill which they described as a *girmit*. Version of these witnesses goes to show that they were not aware about the identity of the deceased. There appears to be some protest to the act of the accused by prosecution witnesses. The burial procession continued and then the witnesses returned to the spot of the incident to notice that the applicant was still hitting the deceased. Supplementary FIR came to be lodged.

7 *Prima facie*, it is not seen that the prosecution witnesses were having animosity against the applicant. The deceased was unknown to them. In the light of this peculiar fact of the present case, lapses on the part of the investigator will have to be appreciated and it will have to be decided whether benefit of lapses on the part of the investigator goes to the accused in the wake of eye witnesses' account coming on record. Similarly improvement in the version of P.W.No.1 Bheemashankar regarding causing punctured wound by the applicant on person of

the deceased will have to be considered. However, eye witnesses' account of the incident given by several witnesses goes to show that the incident of assault on the deceased by the applicant was witnessed by them and it continued for a fairly long period which ultimately resulted in death of Ambanna. Their version is duly corroborated by autopsy surgeon P.W.No.8 Dr.Ravindra Bansode. Hence, considering the nature of offence and degree of criminality shown by the applicant while committing the crime in question, no case for suspension of sentence and bail is made out though there appears to be some lapses on the part of the investigator. In this view of the matter, the application is rejected.

(A.M.BADAR J.)