

Anand

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

BAIL APPLICATION NO.359 OF 2017

Dnyaneshwar Kondiba Margale .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.Satyavrat Joshi, Advocate, for the Applicant
Mr.S.S.Hulke, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.06.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.213 of 2015 registered with the Paud Police Station, Pune(Rural), for the alleged offence punishable under Section 302 of the Indian Penal Code.

3. Learned counsel for the Applicant states that the prosecution case rests entirely

on circumstantial evidence and that there is no material to connect the Applicant with the alleged offence. He submits that infact, it was the Applicant, who informed the relatives and villagers, about the deceased having sustained injuries, pursuant to which he was taken to the hospital. According to the learned counsel, even the statement of the Applicant's mother-Sou. Kondabai Kondiba Margale only shows that there was an altercation between him and the deceased and that in the said altercation, Dhau had sustained a head injury. He, therefore, submitted that the possibility of the Dhau falling from the hilly area cannot be ruled out. He submits that investigation is complete and charge-sheet is filed and that there are no antecedents qua the Applicant.

4. Learned APP opposes the Application. He submitted that the Applicant had disclosed to his mother, on the very day of the incident,

that there was an altercation between him and the deceased - Dhau Laxman Margale at about 9.15 p.m. and that in the said incident, Dhau had sustained an injury on his head and he was lying at the spot. He submits that there is recovery of a stick at the instance of the Applicant. He does not dispute the fact that there are no antecedents qua the Applicant.

5. Perused the papers. According to the Complainant - Dnyaneshwar Nagu Margale, the incident took place on 28.09.2015. He has stated that at about 3.00 p.m. the Applicant went alongwith Dhau to village-Vadvali. He has stated that at around 8.45 p.m. when he called Dhau, the Applicant picked up his phone and stated that they would return late. He has stated that at around 10.30 p.m., the Applicant came to his house; and that he was scared. He has further stated that the Applicant disclosed to him and his family members, that Dhau had sustained an

injury on his head and was lying near Dorki's agricultural land. Pursuant to the disclosure, they all went to the spot and saw Dhau lying in an unconscious condition with a bleeding head injury. The said persons took Dhau in a boat to the Apollo hospital, Lavasa. After giving preliminary treatment, Dhau was admitted to the Sahyadri hospital, at Pune. Dhau expired on 29.09.2015 at 3.00 p.m. According to the Complainant, about 2-3 years prior, a trivial quarrel had taken place, between the deceased and the Applicant, however, no police complaint was lodged. The Complainant has alleged that Dhau was assaulted and murdered because of the said quarrel, by the Applicant.

6. The prosecution case rests on circumstantial evidence. The motive alleged is a trivial quarrel, which took place 2-3 years prior, between the Applicant and Dhau. It appears that soon after Dhau had sustained an

injury, the Applicant disclosed the same to his mother and the Complainant, a relative of Dhau and others and informed them that Dhau was lying injured near Dorki's agricultural land, pursuant to which all went there and took Dhau, by boat to the Apollo Hospital, Lavasa, and thereafter to Pune. Investigation is complete and charge-sheet is filed. There are no antecedents qua the Applicant.

7. Considering the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

O R D E R

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs.25,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall not enter the jurisdiction of Pune District, till the conclusion of the trial, except for the purpose

of attending the trial Court, on the dates given by the trial Court;

(iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The Applicant shall inform his new place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Applicant shall cooperate with the conduct of the trial and attend the trial Court on all the dates;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)