

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.825 OF 2017

Mahendra Shrikrishna Zapadekar .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Swapna P. Kode, Advocate, for the Applicant
Mr.Y.M.Nakhwa, APP, for the Respondent – State
Mr.Chaitanya Pendse i/b. Mr.Rakesh Bhatkar, Advocate, for the
Intervenor

CORAM : REVATI MOHITE DERE, J.

DATE : 20.04.2017

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.21 of 2017 registered with the Ratnagiri Police Station, Ratnagiri(Rural), for the alleged offences punishable under Sections 302, 143, 147, 323, 504, 506 of the Indian Penal Code.

3. Learned counsel for the Applicant submits the Applicant along with other co-accused are alleged to have assaulted the deceased with fist and kick blows. She submits that

the Applicant died due to heart attack. She submitted that taking the prosecution case as it is, no offence punishable under Section 302 of the IPC is disclosed qua the Applicant.

4. Learned APP has produced a Post Mortem report. He submits that charge-sheet will be filed within ten days from today.

5. Perused the papers.

6. The Applicant is stated to be a Social worker of Shivsena and is deputy Sarpanch of Panchyat Samittee. It appears that there was some dispute between the Complainant and the accused. It appears from the complaint, that the Complainant's son has sent some message to one girl, Netram Shinde, daughter of one of the co-accused. On 10.02.2017, the Complainant's group had gone to the village to settle the dispute when the incident took place. According to the Complainant, the accused started abusing the Complainant's son-Chinmay and threatened to assault, when the Complainant and others had gone to the house of the accused to offer an apology. It is alleged that all the accused including the Applicant started assaulting

Kumar Shinde, Mahesh Shinde, Kishor Shinde, Pranav Shinde and others with fist and kick blows. It is alleged that the Applicant along with others assaulted the Complainant's brother - Dayanand aged 50 years on his chest and abdomen, as a result of which, he fell on the ground and started getting pain in his chest. Dayanand was immediately moved to the hospital, where, he was declared dead. Pursuant thereto, the aforesaid complaint has been lodged.

7. A perusal of the post mortem report shows that the Applicant has not suffered any surface injuries on his body. The cause of death is stated to be "postmortem finding suggestive and yellowish fatty streaks in the aorta, narrowing of left coronary artery contusion in left 3rd intercostal space. However, organs procured for Histopathology, final opinion pending till H.P.Report". However, organs are preserved for Histopathology and the report is awaited. It appears that the incident has occurred on the spur of the moment. Although the allegations are that the Applicant along with others assaulted Dayanand with fist and kick blows, the Post Mortem report does not show that the deceased had received any external injury on his person. It prima facie appears that the deceased suffered heart attack, due

to the sudden attack. The probable cause of death appears to be “suggestive of yellowish fatty streaks in the aorta, narrowing of left coronary artery contusion in left 3rd intercoastal space”.

8. Considering the aforesaid, it is prima facie doubtful whether the offence will be under Section 302 of the IPC. 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.50,000/- with one or two sureties in the like amount;

(ii) The Applicant shall attend the concerned Police Station on the **first Monday of every month** between **10:00 a.m. to 12:00 noon** till the conclusion of the trial;

(iii) The Applicant shall not enter the jurisdiction of Ratnagiri (Rural) Police Station till filing of the charge-sheet;

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

(v) The Applicant shall inform his latest 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;

(vi) The Applicant shall file an undertaking with regard to Clauses (ii) to (v) in the trial Court within one week of his release;

(vii) The Applicant to cooperate with the conduct of the trial;

(viii) 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.

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

10. 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.)