

Anand

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

BAIL APPLICATION NO.913 OF 2017

Vaibhav Hanumant Darwade .Applicant

Vs.

The State of Maharashtra .Respondent

**WITH
CRIMINAL APPLICATION NO.677 OF 2017
(For Intervention)
IN
BAIL APPLICATION NO.913 OF 2017**

Smt. Meena Hanumant Waghchoure .Original
Complainant

IN THE MATTER OF

Vaibhav Hanumant Darwade .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.U.Nikam i/b. Mr.A.Satpute, Advocate, for the Applicant
Mr.S.S.Hulke, APP, for the Respondent – State
Mr.Rajesh Jadhav, Advocate, for the Intervenor

CORAM : REVATI MOHITE DERE, J.

DATE : 21.07.2017

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.186 of 2016 registered with the Samarth Police Station, Pune, for the alleged offences punishable under Sections 302, 307, 323 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the incident in question, had taken place on the spur of the moment, over a very trivial quarrel. He submitted that the incident took place on 11.10.2016 at about 8.00 p.m., whereas, the deceased succumbed to his injury on 19.10.2016. He submits that the Applicant is alleged to have assaulted the deceased with a cement block, which was lying at the spot. He submits that although there is a recovery of a blood stained knife, there is no corresponding injury to show, that the knife was used in the commission of the offence. He further submits that the Applicant is aged 19 years and his continued custody will expose him to hardened criminals. He submitted that in the facts, the offence will not fall under Section 302 of the Indian Penal Code.

4. Learned APP opposes the Application. He submits that there is recovery of a blood stained knife and blood stained clothes, at the instance of the Applicant. He does not dispute the fact, that the

Applicant has no antecedents. Learned counsel for the intervenor also supports the learned APP. He submits that the likelihood of the Applicant intimidating the witnesses, residing within the jurisdiction of the Samarth Police Station, Pune cannot be ruled out, in particular, the sole eye witness aged 15 years.

5. Perused the papers. The incident has taken place on 11.10.2016 at about 8.00 p.m.. It appears that there was some dispute between the Applicant and the Complainant, over the Applicant's pet dog. It is alleged that two months prior, the Applicant's dog had attacked the Complainant's husband, pursuant to which, there was an altercation between them. The Complainant is the mother of the deceased. She has stated that her son – Mayur, was addicted to alcohol and would consume alcohol, in the parking place of the building. She has alleged that on 11.10.2016 at about 8.00 p.m., one Onkar Khandelwal informed her, that there was some altercation between the Applicant and Mayur(deceased), in which the Applicant assaulted Mayur with a cement block. Mayur was rushed to the hospital. Pursuant thereto, a complaint was lodged alleging an offence punishable under Section 307 of the Indian Penal Code, as against the Applicant. After the demise of Mayur (deceased) on 19.10.2016 i. e. after 7 days of the incident,

Section 307 was converted into Section 302 of the Indian Penal Code. The post mortem report shows the cause of death as 'due to head injury and blunt trauma to chest'. According to the statement of Onkar Khandelwal aged 15 years, the sole eye witness to the incident, there was an altercation between the deceased and the Applicant. He has stated that that in the said scuffle, the Applicant assaulted Mayur in his abdomen. He has stated that thereafter, the Applicant picked up a cement block and assaulted the deceased with the said cement block, pursuant to which Mayur started bleeding from his head. Whether or not, the offence could be one under Section 302 or a lesser offence, is a matter which will be decided by the trial Court. Investigation is complete and charge-sheet is filed.

6. In the facts of the case, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

ORDER

- (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 the Samarth Police Station, Pune till the conclusion of the trial;
- (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 attend the trial court on every date of hearing given by the trial Court;

(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) within two weeks of his release in the trial Court;

(vii) 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.

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

8. In view of disposal of the Application, the Intervention Application, being Cri. Appln.No.677 of 2017 does not survive and the same stands disposed of accordingly.

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.)