

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 930 OF 2017**

Laxmikant @ Chandrakant Digambar Desale ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Shirish Gupte, Sr. Advocate i/b Mr. Karl P. Rustomkhan for the Applicant

Mr. Prashant Jadhav, A.P.P for the Respondent-State

API Mr. S. G. Kangal from Malegaon Taluka Police Station, Nashik Rural, is present

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 26th APRIL, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 261 of 2016 registered with the Taluka Police Station, Malegaon, Nashik for the alleged offences punishable under Sections 302, 307, 201 and 34 of the Indian Penal Code.

3. Learned Senior Counsel for the applicant submitted that the prosecution case itself is doubtful. He submitted that the complainant (deceased) has alleged that on 17th November, 2016, there was an altercation between him and the applicant's side, in which he was assaulted and abused and hence, it was highly improbable that on 18th November, 2016, the deceased would accompany the applicant and others. He further submitted that the injuries sustained by the deceased were not on any vital part of the body and hence shows that the accused did not intend to cause his death. He submitted that the offence at the highest, would be one under Section 304 (II). He further submitted that there is no recovery at the instance of the applicant.

4. Learned A.P.P opposed the application.

5. Perused the papers. According to the complainant (deceased), on 17th November, 2016, when he visited the tea stall at about 9:00 p.m., the applicant and others got into an argument with him. He has stated that the applicant and the two other co-accused assaulted him and abused him. The complainant (deceased) has further stated that on 18th November, 2016,

the applicant along with two other co-accused came to his house and asked him to join them on their motorcycle. He has stated that he accompanied the applicant and others. Thereafter, according to the complainant, the applicant and others assaulted him, as a result of which, he sustained injuries and thereafter, at about 5:30 a.m., one Ganesh Bhosale and Balu Sonawane saw him and informed his brother, pursuant to which, he was taken to hospital. The complainant succumbed to the injuries on the very same day. Column 17 of the post-mortem report shows that the deceased had sustained 27 injuries. Most of the injuries are, no doubt, stated to be abrasions, however, the cause of death is stated to be haemorrhagic shock due to injuries described. There are also chop wounds. Column 18 shows that the deceased has sustained closed fracture of middle third of left femur with extravasation and infiltration of about 750cc blood and blood clots in and around fracture area. After the complainant's death, the complaint is treated as a dying declaration. A perusal of the dying declaration shows, that the deceased has named the applicant and has attributed a specific overt act to him. The deceased has stated that the accused were armed with swords, iron rods, etc. The applicant is alleged to have been present and assaulted the deceased in both the incidents i.e. of 17th November and 18th

November. The statements of some of the witnesses have been recorded under Section 164 Cr. P. C. i.e. of the deceased's mother, Ganesh and Balu. The statement of the deceased's mother Leelabai shows that the applicant and other co-accused had come on 18th November, 2013 at about 3:00 a.m. and that her son had accompanied them.

6. Considering the statement of the deceased, which was recorded prior to his death and the statements of other witnesses, it is evident that the applicant had assaulted the deceased. Whether or not the offence would be under Section 302 or 304 is a matter which will be decided by the trial Court.

7. Considering the aforesaid, the application is rejected.

8. 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.

REVATI MOHITE DERE, J.