

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1402 OF 2016

Dinkar Devaji Bhavar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Amrish Salunke Advocate for Applicant.

Mr. R. M. Pethe APP for the State.

Mr. Awale, API Yellow Gate Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 16th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 22/08/2015 in crime no. 24 of 2015 registered at Yellow gate Police Station for offence punishable under section 302 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that applicant herein is a fisherman. On 18/08/2015, applicant along with Narendra Sadhan, Mahendra, Kiran, Yogesh, Dharma, Karim, Bhagwan and Jayesh had gone for fishing in high

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sea. That they had travelled deep into the sea up to 64 nautical miles. On 22/08/2015, there was high wind and it was raining. The present applicant along with Dharma were sleeping on the 'Scaffold' of the boat. At about 3.00 p.m., in the afternoon his uncle Kisan Sandhan had tried to wake up the present applicant and Dharma. That there was some verbal altercation between Kisan and present applicant. Within no time, the verbal altercation had taken a violent turn. It is alleged that applicant had picked up a log and hit on the head of Kisan due to which he had sustained a bleeding injury and fell down. Narendra Sandhan lodged a report at the Vasai Police Station. It was registered as '0' number and thereafter the investigation was transferred to Yellow gate police station.

3) Perused papers of investigation, more particularly post mortem notes. Coloumn no. 17 indicates that there is one injury on head which is fracture of skull and it was fatal injury. From the papers of investigation it is clear that there was no pre-meditation. Incident had occurred on the spur of the moment. In a fit of rage, applicant had assaulted the deceased. Coloumn no. 20 of the post mortem notes indicate that deceased was suffering from

tuberculosis. In all probabilities, he could not sustain the said injury. For want of immediate medical attendance, victim had succumbed to the injury. Applicant has been in custody since August 2015. Hence, this Court is of the opinion that in the peculiar facts of the case, applicant deserves to be enlarged on bail.

4) The learned APP submits that one of the accused has not remained present at the time of trial and therefore, charge could not be framed.

5) The learned counsel for the applicant submits that applicant undertakes to cause his appearance before the Sessions Court on each and every stipulated date. Upon failure to attend any two consecutive dates, the learned Sessions Judge shall issue non-bailable warrant and take the applicant into custody.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- with one or more solvent sureties in the like amount.

- (iii) Applicant shall report to the Yellow gate police station on first Sunday of each month till the framing of charge and thereafter, shall attend each and every stipulated date before the Sessions Court.
- (iv) Upon failure to attend any two consecutive dates, the learned Sessions Judge shall issue non-bailable warrant and take the applicant into custody.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)