

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

BAIL APPLICATION NO.1876 OF 2017

Sundarbai Shivdas Gaikwad Applicant

Vs.

The State of Maharashtra Respondent

Mr. Aniket U. Nikam i/by Mr. Aashish Satpute for the Applicant.
Mrs. P.P. Shinde, APP for the State-respondent.
Mr. H.R. Ghuge, PSI, Ambad Police Station, Nasik City.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 19th December, 2017***

P.C.:

1 Heard the learned counsel for the applicant and learned
APP. Perused the papers of investigation.

2 This is an application under Section 439 of Code of
Criminal Procedure. The applicant herein is arrested on 13th May,
2016 in Crime No. 113 of 2016, registered with Ambad Police
Station, Nashik for the offences punishable under Sections 302, 307,
323, 504, 506, 143, 144, 146, 147, 148 of Indian Penal Code. The
investigation is completed and the charge-sheet is filed on 8th August,
2016.

3 It is the case of the prosecution that on 12th May 2016, Dilip Dandekar lodged a report at the Police Station alleging therein that on that day at about 3.30 pm, he was proceeding towards State Bank chowk alongwith his brothers Maruti Dandekar, Ashok Dandekar and Tatya Dandekar. At that time, he and Maruti stopped near Bus Stop of State Bank Chowk and his brothers Ashok and Tatya went to Maharani Wines shop to purchase wine and Pappu Kale accompanied by Anil Kale, Thakubai Kale, Mohan Kale, Sundarbai Gaikwad, Vinayak Gaikwad and Sampat Gaikwad and their other 2-3 friends had apprehended Ashok and Tatya and had assaulted them brutally with iron rod and wooden logs. They were assaulted by male persons with beer bottles and after they had collapsed on the ground, the woman i.e. the co-accused, Thakubai Kale had pelted stone on Ashok, whereas the present applicant hit Tatya with a stone and both the injured had succumbed to death instantaneously. By an order dated 13th December 2016, co-accused Thakubai was granted bail by this court mainly on the ground that she was about 70 years old. The application of the present applicant was rejected.

4 The learned counsel for the applicant submits that the role attributed to Thakubai is similar to the role attributed to the present applicant. It is also submitted that initially the injured was assaulted by the male members brutally and when he had fallen on the ground, other accused had assaulted with fists and kick blows,

whereas the present applicant had assaulted with a stone and therefore, by virtue of doctrine of parity, the applicant would also be entitled to grant bail. As against this, the learned APP vehemently submits that a specific role is attributed to the present applicant. Column no.17 of the post-mortem notes would show that deceased-Tatya had sustained as many as 9 injuries, out of which injury nos. 1, 2 and 3 are in the nature of contused lacerated wounds, which were on the temporal region of scalp. The learned APP submits that the applicant does not deserves to be enlarged on bail.

5 Upon perusal of the papers of investigation, it prima facie appears that the injured were initially brutally assaulted by the male members with iron rods and wooden logs and thereafter the woman had assaulted with a single stone. There are 3 contused lacerated wounds on temporal region, which could be attributed to the male members. The bail application of Thakubai was allowed almost a year ago and therefore this court is of the opinion that further incarceration of the present applicant would be unwarranted. Hence, the applicant deserves to be enlarged on bail.

6 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

- 1 The application is allowed.
- 2 The applicant- Sundarbai Shivdas Gaikwad be enlarged on bail on furnishing P.R. bonds in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.
- 3 The applicant shall not reside at Nashik till the stage of framing of charge and shall only attend the court at Nashik on the stipulated dates.
- 4 Learned counsel for the applicant, upon instructions submits that the applicant would reside at Karmala. After being enlarged on bail, the applicant shall furnish her address and cell-phone as well as land-line nos. to the Ambad Police Station.

Application is allowed and stands disposed of.

(*Smt. Sadhana S. Jadhav, J*)