

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2125 OF 2016**

Mahesh Harishchandra Deshmukh)...Applicant

V/s.

State OF Maharashtra)...Respondent

Mr. Akash Warang, Advocate for the Applicant.

Mr. Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 11th JANUARY 2017.

P.C. :

By this second bail application, the applicant-accused in Crime No.174/156 for the offence punishable under Section 302 of the IPC registered with Khalapur Police Station Dist: Raigad is praying for his release on bail.

2 Heard learned counsel for the applicant-accused at sufficient length of time. By relying upon judgment of the Apex Court in the case of **Babu Singh and Ors. v. State of UP** reported in 1978(1) SCC 579, the learned counsel argued that second bail application of the accused/applicant can be entertained by

pointing out further material as well as discrepancy in the prosecution case. The learned counsel further argued that cause of incident is stated to be minor altercations between the accused and the deceased. It is further argued that though the FIR is lodged by eye witnesses to the incident, medical officer has noted history as stab injury to the chest by unknown person thus, creating doubt in the prosecution case. The learned counsel further argued that nature of injury is stated to be stab injury on left fourth intercostal space by sharp edged weapon and cause of death is stated to be rupture of heart, still in submission of the learned counsel for the applicant-accused, there was no blood on clothes of the applicant-accused recovered on the basis of his confessional statement. Learned counsel further argued that recovery panchanama of the knife states the name of the accused-applicant as person who has recovered knife. With this, learned counsel for the applicant-accused submits that prosecution case so far as offence punishable under Section 302 of the IPC is highly doubtful and therefore, applicant-accused is entitled to be released on bail during the pendency of the trial.

3 The learned APP opposed the application.

4 I have carefully perused the charge-sheet. The crime in question is registered on the basis of eye witness account given by informant Yogidas Prakash Mehtar who was accompanying the deceased Mangesh Patil at the relevant time. He has categorically stated that he has seen altercations between the present applicant-accused as well as deceased Mangesh Patil and during the course of that altercations, the applicant-accused gave blow by sharp edged weapon on the chest of the deceased. Medical papers including autopsy report fully corroborates this version of the informant/eye witness. All these facts were considered at the time of deciding the first bail application. History mentioned in medical papers that assault was by some unknown person is of no consequence at this stage because of eye witness account of the incident given by the first informant. Medical case-papers does not show that this history is at the instance of the first informant and as such, nothing useful to the cause of the applicant-accused can be seen from the case-papers of the Reliance Hospital.

5 Non finding of the blood on the clothes of the accused-applicant is also of no assistance as eye witness account given by the first informant does not show that applicant-accused had handled the deceased after giving blow of sharp aged weapon to him. Mentioning of name of the applicant-accused in the recovery panchanama of knife is of no assistance because it is stated to be on the basis of confessional statement of applicant-accused. Section 27 of the Indian Evidence Act, 1872 does not permit reading of confessional statement of the accused-applicant. What is permitted by Section 27 of the Indian Evidence Act, 1872 is recovery or discovery of fact in pursuance of the statement so made.

6 While deciding the earlier bail application, it was also considered whether offence would be prima-facie under Section 302 of the IPC or it would fall under some different punishing section of the IPC.

7 In the light of these observations, no case is made out for grant of bail to the accused-applicant. Therefore, application is rejected.

(A. M. BADAR, J.)