

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2364 OF 2016

Mr. Bapan Chandi Patra	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Ms. Deepika M. Bafna, Advocate for the applicant.

Mr. Ajay Patil, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 4th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 4.2.2016 in Crime No.36 of 2016 registered at Navghar Police Station for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The investigation is completed and charge sheet is filed.

2. It is the case of the prosecution that the present applicant - Bapan is resident of Konkobati, Midnapure, West Bengal. That the applicant and Swapan were working at Mumbai in a firm which was manufacturing imitation jewellery. That other persons are also of the same village who were working with Swapan and the present applicant. One of

them was working as the Manager. Kanchan Ghosh is the owner of the said firm. On 4.2.2016, Santa Anand Pan, who happens to be the father of Swapan, lodged a report at the police station alleging therein that on 1.2.2016, he received a phone call on his cellphone from the owner of the firm informing him that in the intervening night of 31st January and 1st February 2016, Swapan had suffered a heart attack and he had succumbed to the same. On the basis of his report, A.D. No.10 of 2016 is registered under Section 174 of Cr.P.C. The first informant rushed to Mumbai. He had seen the dead body of his son and noticed bleeding from his ears. He immediately suspected that his son had died a homicidal death and, therefore, insisted upon conducting post-mortem on the dead body of his son. The Medical Officer at J.J. Officer after performance of autopsy, had arrived at a conclusion that the cause of death is head injury associated with multiple injuries over the body. Thereafter, the father of Swapan had lodged a first information report at the police station on the basis of which Crime No.36 of 2016 was registered against the owner, manager, Bapan – the present applicant and others for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The investigation is completed and charge sheet is filed.

3. Upon perusal of the compilation of the charge-sheet, it is clear that the deceased Swapan had died a homicidal death. That there is an eye-witness to the said incident i.e. Sudeep Vijay Gharoi. He has categorically stated that on 31.1.2016, the Manager of the said firm was to go home and since it was customary to give a party to the associates by any person who is going home, the Manager had purchased chicken and had asked the present applicant and Swapan to cook the same and have food. It is further stated that some person had thrown onion and garlic on the chicken that was washed. Swapan was of the opinion that it was not good for consumption and therefore had asked the eye-witness to dispose of the same. Thereafter, they had cooked food. The Manager had also eaten food along with Swapan. In the dormitory, Bapan, Swapan and Sudeep were sleeping in a row. In the middle of the night, there was an altercation between Bapan and Swapan. Upon enquiry, the applicant had disclosed to Sudeep that Swapan had kicked at his private parts and therefore there was a quarrel. They had informed about the same to the Manager. Sudeep had actually seen the present applicant dashing the head of Swapan to the wall several times and thereafter Swapan had fallen on the ground.

4. The learned counsel for the applicant submits that the applicant

had no intention to cause homicidal death of Swapan and that they were good friends. They were sleeping peacefully and that deceased had initiated the quarrel.

5. Perused the post-mortem notes. Column No.19 of the post-mortem notes would indicate that the head of the deceased was banged against the wall brutally causing fracture of skull which was cranial cavity over left occipital bone. There was infiltration of blood. There was extradural, subdural haemorrhage. It was a brutal injury and the skull was fractured at several places including the base of skull noted at the spheroid bone which was a compound fracture. The said injuries are corresponding to the injuries mentioned in column No.17. The material is sufficient to indicate that the applicant had brutally assaulted the deceased. In this case, it is pertinent to note that the owner of the firm i.e. Kanchan Ghosh has been exonerated under Section 169 of Cr.P.C. In fact, the eye-witness had informed the owner that Swapan had died due to the injuries caused by the applicant. Despite that, Kanchan Ghosh had informed the father of the deceased that Swapan had suffered a heart attack and in view of the same, A.D. report was filed and an initial enquiry was conducted in the A.D. report. It is clear that the owner and the Manager deserve to be prosecuted

under Section 201 of the Indian Penal Code. However, for reasons best known to the investigating agency, they have been exonerated under Section 169 of Cr.P.C.

6. The learned APP, upon instructions, submits that there is every likelihood that the investigating agency may seek permission under Section 173 (8) of Cr.P.C. and file a supplementary charge-sheet against the owner and others for the offence punishable under Section 201 of the Indian Penal Code.

7. The application being sans merits, stand rejected.

(SMT. SADHANA S.JADHAV, J.)