

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

BAIL APPLICATION NO.2413 OF 2016

Dattatrey Laxman Badekar

.... Applicant

versus

State of Maharashtra

... Respondent

Mr.S.R. Pasbola, Advocate i/b. Rahul Arote, Advocate for the Applicant.

Mr.Rajan Salvi, APP for the State/Respondent.

Mr.M.S. Mohite, Advocate for the complainant.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 27th JANUARY, 2017.**

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under sections 302, 326, 324, 323, 341, 147, 148, 149, 427, 504 of the Indian Penal Code in C.R.No.85/16 of Karjat Police Station. The offence is registered at the instance of Manohar Dhondu Karnuk on 21/05/2016.

2. It is the case of prosecution that on 20/05/2016 at Malwadi, the incident of assault took place. The complainant Manohar and his brother Kisan Karnuk were residing adjacent. He was having business of brick kilning. On 20/05/2016 at around 07.30 p.m. his brother Kisan with his son Pravin had gone for a round to brick kilning. They found that the applicant/accused alongwith his family members were excavating the soil with J.C.B. and that according the complainant was affecting the brick kilning and therefore his brother i.e. Kisan and his son Pravin both objected to excavation and thereafter there was altercation between the two groups. After hearing it, the complainant and his family members rushed to the spot and suddenly the applicant/accused alongwith his two sons i.e. Dilip Badekar and other family members who were armed with sticks, iron rods started assaulting to the complainant and his family member. Kisan sustained injuries on the head and other family members also sustained simple injuries. Thereafter when Kisan and Pravin were being shifted to hospital in a car, the applicant/accused alongwith his family

members, stopped that car, damaged the car and demanded that the injured persons were to be taken out of the car and they made the car go back. Thereafter Kisan who had sustained fracture to the scalp, succumbed to the injury on 22/05/2016. The applicant/accused was arrested on 22/05/2016. Since then he is in the prison. Hence this bail application.

3. The learned counsel for the applicant/accused has submitted that it was a sudden fight. There was no premeditation and she died due to one fatal blow i.e. the grievous injury to his head. He submitted that the applicant/accused has no criminal record and therefore no specific role of assault is attributed to the applicant/accused. There is common recovery of weapons from this applicant/accused. However, no specific weapon is attributed in the hand of the applicant/accused.

4. The learned counsel for the applicant/accused has submitted that there was a cross complaint registered by his

relative Manohar Laxman Badekar in respect of same assault and the offence is registered at C.R.No.87/16 of Karjat Police Station. He further relied on two injury certificates and he has submitted that his son Dilip and Manohar had sustained grievous injury.

5. The learned prosecutor while opposing the bail has relied on complaint of Manohar Karnuk. So also the statement of witnesses. He relied on the injury certificate. He has submitted after the incident of assault the applicant/accused, who is the head of the family again proceeded and stopped the vehicle, which was taking the injured to hospital for medical treatment and the car was damaged. He submitted that the applicant/accused not to be granted bail.

6. I rely on the statement of the complaint. Statements of the witnesses and also injury certificate. The assault is witnessed by 4-5 persons. Their statements are recorded. The statements disclose that the fatal blow was given by Dilip Badekar and

Kishor Badekar, the sons of the applicant. As per the statements of the eyewitnesses Dattatrey Badekar i.e. the present applicant/accused was very much armed with the weapon. The injury certificate of Kisan and his post-mortem report disclose that he died due to Haemotoma i.e. and shock due to head injury.

7. Admittedly there was only one head injury. The applicant/accused is arrested on 22/05/2016 and he is in the prison since then. There is a cross complaint and two persons from the group of applicant/accused are also injured. In these circumstances this bail application could have been allowed. However, the statements of the witnesses especially Janardan Badekar, Rajesh, who are independent witnesses, disclose that when they were shifting injured Kisan and Pravin in their car, the present applicant/accused alongwith other accused again arrived before their car and they asked them to take out the injured person. They damaged the car, so the car could not proceed either to hospital or police station. The conduct of the

applicant/accused immediately after the incident was to prevent the injured person from taking medical aid. In my view this is an aggregating factor and therefore I am not inclined to grant bail at this stage. If the trial is not commenced till 31/12/2017, the applicant/accused may file a fresh application for bail.

8. The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)