

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

BAIL APPLICATION NO.2538 OF 2016

Vijay Dyandeo Deshmukh Applicant

versus

State of Maharashtra ... Respondent

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- Mr.Vishwanath S. Talkute, Advocate for the Applicant.
- Mr.S.S.Hulke, APP for the State/Respondent.
- PC – Mr.D.D. Nale, Dahiwadi Police Station.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 14th MARCH, 2017.**

P.C. :

1. This is an application under section 439 of Cr.P.C. moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under section 302 r/w 34 of the Indian Penal Code in C.R.No.75/16 of Dahiwadi Police Station. The offence is registered at the instance of Shabnam Gagade on 07/10/2016, who gave information to the police about the assault committed by the applicant/accused and his brother on 13/07/2016.

2. It is the case of prosecution that complainant, her husband, children and her brother-in-law Shakil Gandhi Gagade were residing together at Bidal Road, Dahiwadi, Taluka Man, District – Satara. They were neighbours. They used to beg for food and survive. On 13/07/2016 they went to the house of the accused. The mother of the applicant/accused offered them some vegetables and water. So they had food in the courtyard and thereafter they proceeded further and started begging.

3. After they crossed 4-5 houses, suddenly four persons came and they alleged that the complainant and her brother have stolen the cell phone. They demanded the cell phone. Those persons took them near the said house and started beating. They assaulted the brother of the complainant with wooden rod and cable wire. She was shouting and also prayed them that they should not assault her brother-in-law. However, those persons did not listen and went on assaulting deceased Shakil Gagade, i.e. the brother-in-law of the complainant. Then they called her husband who arrived there. At that time, her

brother-in-law was alive. However, he could not walk. Police also arrived there. In the police van the complainant, her brother-in-law, her husband and the applicant/accused started proceeding towards the hospital. At that time, her brother-in-law i.e. Shakil was talking with the complainant. However, when he came out of police van, he vomited and died. The applicant/accused, who accompanied the complainant in the hospital, was arrested on the spot and therefore this bail application.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused had no intention to kill Shakil i.e. the brother-in-law of the complainant. The incident took place because cell phone in the house was stolen and they suspected the complainant and brother-in-law of the complainant. The assault is committed in heat of anger. The complainant has no antecedents and the weapon used at the time of assault was some cable wire and wooden stick which were lying outside the house. The learned counsel further submitted that there is variance in the FIR dated 13/07/2016

and supplementary FIR dated 16/07/2016 how the incident has taken place. It is further submitted that the applicant/accused is in the prison since 13/07/2016 and therefore he be granted bail.

5. The learned prosecutor opposed the bail application. He relied on post-mortem report. He submitted that the deceased was brutally assaulted by the applicant/accused and his brother. There are statements of witnesses who have identified the applicant/accused assaulting the deceased.
6. Heard statements. Perused the complaint and the statement of the witnesses so also post-mortem reports. There is evidence to show that the applicant/accused was present and he alongwith other accused assaulted the deceased. However, the incident is not premeditated. It took place in spur of moment and out of suspicion of theft. The post-mortem report discloses that he died due to multiple fractures with splenic rupture. Injuries disclose that spleen was ruptured. However, no injuries are seen on the head, scalp of chest.

7. Considered the submissions of learned counsel for the applicant/accused. There are no criminal antecedents. Charge-sheet is filed in this matter. The applicant/accused is in prison since last more than 7-8 months. Considering this, bail is granted to the applicant/accused on following terms and conditions :

ORDER

- (i) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.40,000/- with one or two solvent sureties in the like amount.
 - (ii) The applicant/accused shall attend all the Court dates.
 - (iii) The applicant/accused shall not tamper with the evidence or pressurize the complainant and other witnesses.
 - (iv) The applicant/accused shall not indulge into any criminal activity.
 - (v) The applicant/accused is directed to stay outside the jurisdiction of Dahiwadi Police Station till 30/06/2017.
8. The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)