

NSC.

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

CRIMINAL BAIL APPLICATION NO.103 OF 2018

Shankar@ Yogesh Dharma Warghada	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Amit Mane, for the Applicant.

Ms.P.N.Dabholkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 5th MARCH, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-8 of 2017 registered with the Tokawade Police Station, Thane, for the alleged offences punishable under Sections 302, 504 and 506 of the Indian Penal Code.
3. Learned Counsel for the applicant submitted that the applicant

has been falsely implicated in the aforesaid case. He submitted that although the incident had taken place on 16th January, 2017, the FIR was lodged only on 20th January, 2017. He submitted that the statements of Tulshiram Wagh and Keshav Wagh are contrary to the FIR, lodged by deceased-Girijabai's son-Gurunath Kusha Warghada and as such shows the falsity of the complaint. He submitted that there was no motive for the applicant to assault Girijabai. He submitted that even otherwise, the offence would not be one under Section 302 of the Indian Penal Code. He further submitted that the applicant has no antecedents.

4. Learned APP opposed the application. She submitted that a perusal of the FIR lodged by Gurunath Kusha Warghada, clearly shows the complicity of the applicant. She further submitted that there was clear intention to cause the death of Girijabai.

5. Perused the papers. The incident in question took place on 16th January, 2017 at about 4.15 p.m. According to the complainant- Gurunath Kusha Warghada, aged about 16 years, there was a quarrel that took place between him and the applicant. He has stated that his mother – Girijabai

(deceased) intervened in the quarrel and that the applicant pushed her, as a result of which, she fell on the bank of the field. He has further stated that the applicant thereafter assaulted Girijabai with a log on her head, chest and back. The FIR was lodged on 20th January, 2017, after the demise of Girijabai, with the Tokawade Police Station, Thane. After investigation, charge-sheet was filed in the said case. Gurnath Kusa Waghada, the First Informant, has alleged that there was a quarrel between him and the applicant on the ground that the applicant was suspecting that the complainant was having illicit relations with his wife. He has alleged that the applicant started abusing and threatening him, pursuant to which, his mother Girijabai came and tried to settle the quarrel; that the applicant pushed Girijabai, as a result of which, she fell on the bank of the field; that thereafter, the applicant assaulted her with a log on her head, chest and back, as a result of which, she sustained an injury. He has further stated that thereafter, the applicant left the spot. The complainant has further stated that being afraid, he called out for help, pursuant to which, villagers assembled at the spot and that they took Girijabai home. A perusal of the statements of Tulsiram Wagh and Keshav Wagh show that when they reached the spot on 16th January, 2017, they saw that Girijabai was vomiting

and that no other person was present at the spot, pursuant to which, they picked her up and took her to her brother's house. These statements are contrary to the statement of the complainant. There is no material on record to show that the applicant had any motive to assault Girijabai. The statements also show that Girijabai was first taken to a Rural Hospital at Tokawade and thereafter, to the Central Hospital Ulhasnagar for CT scan, however, as the CT scan machine was not working, she was asked to be taken to Chhatrapati Hospital and then to J.J.Hospital. However, since the family members had no money for transportation, they brought her back to Tokawade Rural Hospital. Girijabai expired on 19th January, 2017. *Prima facie*, in the facts, it is doubtful whether an offence under Section 302 of the Indian Penal Code is made out, qua the applicant. Be that as it may, the applicant is in custody since January, 2017. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not tamper with the evidence or attempt to threaten, intimidate, influence or contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two week's of his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

9. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)