

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

BAIL APPLICATION NO. 2313 OF 2018

Bacchu @ Bhushan Bhaidas KandekarApplicant

V/s.

The State of MaharashtraRespondent

Mr. S.G. Rajput for the applicant.

Mrs. J.S. Lohokare, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 10th SEPTEMBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code, filed by the aforesaid applicant, who is facing trial in Sessions Case No.77 of 2017 pending on the file of Additional Sessions Judge, Malegaon. The aforesaid case arises from C.R.No.I-261 of 2016 registered at Malegaon Taluka Police Station for offences punishable under sections 201, 302, 307 r/w. 34 of the Indian Penal Code.

2. Mr. S.G. Rajput, learned counsel for the applicant contends that the crime for offence under section 307 was registered on 18/11/2016 at 06:25 p.m. on the basis of the statement/report of the injured, whereas the records reveal that the injured had already expired at 06:00 p.m. He therefore claims that the first information report lodged

by the injured is itself fabricated. He further contends that the applicant is not involved in the crime. Nothing incriminating has been recovered from or at the instance of the applicant. Furthermore, the applicant has no criminal antecedents and there is no possibility of the applicant absconding or interfering with the course of justice.

3. Per contra, Mrs. J.S. Lohakare, learned APP submits that pursuant to the first information report lodged by the injured, offence under section 307 was registered. In view of the death of the said injured, the offence under section 302 of the Indian Penal Code has been added. She has submitted that there is *prima facie* material on record to show that the applicant was involved in commission of a serious crime and hence, this is not a fit case for grant of bail.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The records *prima facie* reveal that the injured Bhila Shinde had lodged the first information report on 18/11/2016 alleging that on 17/11/2016, at about 09:00 p.m., the applicant and two others (*Chandrakant and Nimba Jadhav*) had abused and assaulted him while he was at a tea stall of the applicant. On 18/11/2016, at about 03:00

a.m., while he was sleeping in his house, his mother woke him up and told him that the applicant and Nimba had come to the house and were calling him. When he went out of the house, the applicant told him to accompany them. The applicant, Nimba and Chandrakant took him near the paddy field of one Daga Chowdhari and assaulted him with iron rod and swords. At about 05:30 a.m., Ganesh Bhosale and Bapu Sonawane saw him lying in injured condition and informed his brother who later took him to the hospital.

6. Pursuant to the said first information report, C.R.No.I-261 of 2016 was registered against the applicant and the two others for offence punishable under section 307 r/w. 34 of the Indian Penal Code. The records reveals that the injured succumbed to the injuries on the same day at about 06:00 p.m. and accordingly the offence was altered to section 302 of the Indian Penal Code.

7. The post mortem report *prima facie* reveals that the deceased had sustained as many as 26 injuries. The medical officer has opined that the death was due to hemorrhage and shock on account of the said injuries. The medical reports thus supports the case of the prosecution.

8. The statement of Santosh Chowdhari also *prima facie* reveals that on 17/11/2016, at about 09:00 p.m., the applicant and others had abused and assaulted the deceased. The statement of Lilabai Shinde, the mother of the deceased also indicates that on 18/11/2016, at about 03:00 a.m., the applicant had come to their house alongwith two others and told her that they had some work with the deceased. The applicant and others had insisted that the deceased should accompany them and hence the deceased had gone with them on their motor cycle. The statement of Ganesh Bhosale and Bapu Sonawane also reveals that on 18/11/2016, at about 05:00 to 06:00 a.m., they had seen the deceased lying near the paddy field at Daga Chowdhari in an injured condition. The deceased had told him that the applicant and others had come to his house and they had brought him to the place of incident and thereafter, assaulted him with deadly weapons.

9. Thus, the material on record *prima facie* reveals that the applicant was involved in committing the aforesaid crime. The offence is of the serious nature. The trial has not yet commenced. Some of the witnesses are from the same village and in the event applicant is released on bail, there is every possibility of the applicant interfering with these witnesses and thus thwarting the course of justice.

10. Considering the above facts and circumstances and also the gravity of the offence, in my considered view, this is not a fit case for grant of bail. Hence, Bail Application is dismissed. Suffice to say that the observations recorded while disposing of this application, shall not be construed as an expression of opinion on merits of the case.

(SMT. ANUJA PRABHUDESSAI, J.)