

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

BAIL APPLICATION NO.2898 OF 2017

Ambarish Ashok Gosavi		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Satyavrut P. Joshi for the Applicant.
Ms. P.P. Shinde, APP for the State.
PSI, Mr. S.N. More, Vijapur Police Station, Solapur.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 8th January, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 19th August 2017 in Crime No.490 of 2017, registered at Vijapur Naka Police Station for the offences punishable under Sections 302, 323 read with 34 Indian Penal code. The investigation is completed and the charge-sheet is filed against the present applicant for the said offences.

3 It is the case of the prosecution that on 19th August, 2017, the complainant, Balvant Shankarrao Yadav lodged a report at the police station alleging therein that Yashwant Yadav happens to be his brother. He had constructed one house at Rubi Nagar, Solapur. On 19th August 2017, both the brothers were cleaning the house by using JCB. They had uprooted the garbage bin, which was in front of their house and had placed it in front of neighbour's house. At that point of time, the present applicant and Amol had raised a quarrel with Yashwat Yadav and thereafter assaulted him with fists and kicks blows. Yashwant Yadav had fallen down and thereafter he was shifted to Ashiwini hospital at Solapur and on admission, he was declared dead. Balwant Yadav lodged a report. On the basis of which, Crime No. 490 of 2017 is registered against the applicant and his brother for the offence punishable under Section 302, 323 read with 34 Indian Penal Code.

4 Perused the papers of investigation. More particularly, post mortem notes, which clearly indicate that there were no external injuries on the person of the deceased. The cause of death is shown as 'coronary artery insufficiency'. Column No. 20 of the post mortem notes shows "No abnormal collection. Wt-300 gm. Atherosclerotic changes seen in left anterior descending artery and right coronary artery with approximately 40% block each, 2.5 cm. from its origin, gritty on cut section. Additional remarks Nil".

5 Learned counsel for the applicant submits that in fact the applicant had no intention of causing homicidal death of Yashwant. That in the course of altercation, Yashwant was assaulted with fists and kicks blows and therefore he deserve to be enlarged on bail. Learned APP submits that the brother of the applicant namely Amol is still absconding and therefore the applicant does not deserve to be enlarged on bail. From the records, it can be inferred that the deceased had approximately 40% of blockage. It cannot be said that the applicant was aware of his physical condition and had no knowledge that he would suffer coronary attack. Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the present applicant deserve to be enlarged on bail. The co-accused shall not claim parity with the present applicant.

6 The observations made hereinabove are prima facie in nature and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

3 The applicant shall report Vijapur Naka Police Station on
1st and 3rd Sundays of each month for a period of six months.

(*Smt. Sadhana S. Jadhav, J*)