

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1669 OF 2019

Sandip Shashikant Patil] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. A.S. Khandeparkar a/w Mr. Rajdeep Gude a/w Mr. Sankarpa Rajpurohit a/w Mr. Rakesh Pathak a/w Mr. Rohit Mahadik a/w Ms. Apoorva Khandeparkar i/b Khandeparkar & Associates, Advocate for the Applicant.

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

PSI Dilip Palave attached to Vengurla Police Station, District Sindhudurg present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 16th JULY, 2019.

P. C. :-

1. The applicant is seeking bail in connection with C.R.No. 20/2019 registered with Vengurla Police Station, District Sindhudurg u/sec. 302, 323, 504, 506 r/w 34 of I.P.C.

2. The investigation in this offence is over and the charge-sheet is filed. At the time of filing of charge-sheet, the charge u/sec. 302 of I.P.C. is dropped and the charge-sheet is filed mainly u/sec. 304 of I.P.C. along with other offences.

3. The FIR in this case is lodged by one Sudam Morje on 28/02/2019. In his FIR, he has stated that there was a dispute between his family and the present applicant. They were having adjacent lands and the dispute was regarding boundary of their respective lands. The applicant had employed some workers to erect fencing as a boundary between these two lands. The informant's family had objected to that and therefore on 28/02/2019 at about 10.15 a.m., this incident has taken place. At that time, the applicant's workers were erecting the fencing. The first informant and his family members objected to that. The applicant came on the spot and started quarreling with them. The applicant assaulted the informant's father on his face, chest and stomach. The informant, his wife, brother and mother tried to intervene. One Shailesh Patil assaulted Gauresh with fist blows and kicks. Accused Bhai Dabholkar and Rajaram assaulted informant's mother and wife. In the meantime, the applicant forcibly pushed the informant's father Bhanudas who fell on a cement pole. Thereafter, he fell down and died on the spot. On this basis, the FIR is lodged.

4. The applicant was arrested on 03/03/2019 and since then he is in custody.

5. The investigation is over and charge-sheet is filed. A copy of the charge-sheet is produced by Ld. Counsel for the applicant. The charge-sheet contains statements of about 4 to 5 eye witnesses. Most of them were from the family of the informant viz., his wife and mother. The statement of witnesses Arpita and Gauresh mention the incident in the same manner as is described in the FIR. One neighbour Vasudev has also narrated the incident in the same fashion.

6. The postmortem notes show that, there were no external injuries on the dead body at all. The cause of death was mentioned as “Acute Coronary Insufficiency with Lung Anamoly and Opinion reserved for Viscera Analysis”.

7. Investigating Officer sought opinion of the Medical Officer attached to the Primary Health Centre, Mangaon. The Medical Officer opined that the deceased was suffering from Tuberculosis and had fibrosis at right lung as mentioned in the cause of death. It was also

opined that the deceased could be die because of Tuberculosis and that deceased had acute coronary insufficiency/acute heart attack and it could have been aggravated due to assault on him.

8. Heard Mr. A.S. Khandeparkar, Ld. Counsel for the Applicant and Mr. Rajan Salvi, Ld. APP for the State/Respondent.

9. Ld. Counsel for the applicant submitted that even the police have accepted the fact that, it is not a case of an offence punishable u/sec. 302 of I.P.C. The said section is dropped from the charge-sheet. As on today, the charge mentioned in the charge-sheet are u/sec. 304, 323 of I.P.C. etc. He therefore submitted that, the assault was not committed by the applicant with an intention of commission of murder. It was unfortunate that the deceased had died in the assault. But there is nothing to show that the applicant was aware of the medical condition of the deceased who was suffering from Tuberculosis and had history of heart disease. He submitted that the applicant is in custody since 03/03/2019. The investigation is over and his further custody during trial is not necessary.

10. These submissions were opposed by Ld. APP. He submitted that though the offence u/sec. 302 of I.P.C. is dropped from the charges, still Section 304 of I.P.C. is also a serious offence. The applicant had no business to assault the deceased. The dispute could have been resolved by taking recourse to proper civil remedies.

11. I have considered the submissions advanced before me. The incident is narrated by the first informant. It is sufficiently corroborated by all the witnesses. At this stage, there is no scope to doubt the veracity of their statements. The applicant had assaulted the deceased firstly by pushing him and then by assaulting him on face, chest and stomach. Thereafter, he had pushed the deceased who fell on a cement pole. Significantly, the postmortem notes do not show that, the deceased had suffered any external injuries. It means that the assault, if any, that was mounted by the present applicant was not of such a nature which could leave marks on the deceased. It is unfortunate that the deceased had serious history of Tuberculosis and heart disease. The incident had aggravated his medical condition leading to his death. In this view of the matter, though the deceased had died in the assault, the applicant cannot be said to have to

entertained the requisite intention or even knowledge that his acts would lead to death of the deceased. Of course, this fact will have to be tested and decided during the course of the trial. However, the applicant has sufficiently made out a case for his release on bail. In this view of the discussion, following order is passed.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No. 20/2019 registered with Vengurla Police Station, District Sindhudurg, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)