

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

BAIL APPLICATION NO.2693 OF 2018

Santosh Rupchand Pawar **...Applicant**

Vs.

State of Maharashtra **...Respondent**

Mr. Rahul K. Dhaygude, for the applicant.

Ms. S. S. Kaushik, for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : JUNE 26, 2019

P.C.:

1. The applicant is seeking bail in connection with C.R. No.60/2018 registered at Mhaswad Police Station, Satara under Section 302 of IPC.

2. The FIR is lodged by one Dhanesh Ghanwat on 21/5/2018. According to him, he had owned pocklain machines for excavating earth. The deceased Sonukumar Ram was resident of Jharkhand and was working with him. The present applicant was also working with him as an operator of the said machines.

3. On 20/5/2018, at about 1.35 p.m. he received telephone call from one Rajendra Katkar. He informed the first informant that the machine operators were quarreling with each other. At that time, the first informant called the operators on telephone and told them not to quarrel with each other. On next day, i.e. on 21/5/2018, in the morning, at about 7.35 a.m. Sonukumar Ram called and told the first informant that the other operator Santosh had assaulted him and had left the place. Sonukumar requested the first informant to send somebody to take him to the hospital. The informant immediately called Rajendra Katkar however, he was not available. In the meantime, Sonukumar called the first informant on 2-3 occasions. He was saying that if he was not treated immediately he was not likely to survive. After some time, one Rajvendra Singh called the first informant and told him that Sonukumar was assaulted with sharp weapon and his intestines were protruding out. When the first informant went to the spot, Sonukumar was removed from there. He had already succumbed to his injuries. Therefore, on these allegations the FIR was lodged.

4. The applicant was arrested on 22/5/2018. The Post Mortem shows that the death was due to stab injuries. There are five

injuries mentioned in the PM notes in which one of them was CLW in the abdomen.

5. The investigation is over and the chargesheet is filed. The chargesheet contains statements of two witnesses namely Rajendra Katkar and Prem Kumar to whom deceased had made phone calls and had informed about the incident. There is statement of one Sanjay Jadhav who had visited the spot when the deceased was still alive. The deceased told him about the assault by the present applicant. He told that present applicant had removed sharp part of the pocklain machine and had assaulted the deceased with that sharp part. There is statement of one Rajendra Katkar who has spoken about the quarrel that had taken place on the earlier date between the deceased and the present applicant. The investigation shows that the weapon was recovered at the instance of the present applicant.

6. Heard Mr. Dhaygude, Ld. Counsel for the applicant and Ms. S. S. Kaushik, Ld. APP for the State.

7. Mr. Dhaygude submitted that there is no direct evidence against the present applicant. The evidence is purely circumstantial in

nature. He submitted that commission of the offence was not possible in the manner in which it is described. He submitted that the pocklain machine does not have sharp edges. He submitted that in any case weapon which was recovered at the instance of the present applicant was not having blood stains. The applicant therefore, deserves to be released on bail.

8. Ld. APP pointed out that there is sufficient pieces of material connecting with each other completing the chain of circumstances against the present applicant. He submitted that the relation between the deceased and the present applicant were not good and there was serious quarrel on the previous day also.

9. I have considered the entire material on record. The telephone call made by the deceased to the first informant and two others constitute oral dying declarations. One Sanjay Jadhav who had reached to the spot had also spoken with the deceased and at that time deceased had described the incident to him. The deceased has taken name of the present applicant as the assailant. This is another dying declaration. Hence, at this stage, there is sufficient material to show complicity of the present applicant. Even the weapon is recovered at his

instance. The contention that the assault was impossible to take place with machine as the weapon, cannot be accepted because only part of the machine was used as a weapon. Looking at the nature of injuries, it is not impossible that the injuries could have been caused by that part of the machine. Hence, no case for bail is made out. Application is rejected.

(SARANG V. KOTWAL, J.)