

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

**CRIMINAL BAIL APPLICATION NO.393 OF 2019
IN
CRIMINAL APPEAL NO.525 OF 2018**

Sumit Kailash Tiwari

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Ramesh Dube – Patil i/b. M/s. Jay & Co., Advocate for the Applicant.

Mrs.P.P. Shinde, APP for the Respondent-State.

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**CORAM : B. P. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : APRIL 03, 2019.

P.C.:

Applicant original accused no.2 in jail since 2014, seeks bail. Submission is that, the allegation against him is of injury to husband of informant by giving blow of wooden rod of axe. It is pointed out that the original accused no.1 i.e. father of present applicant was present on spot and he participated in attack is not accepted by the trial Court. The brother of informant was given a blow of spade on head by accused no.3. The said brother latter on expired. The contention that the

applicant gave blow on the head of husband, has been used to implicate him in the entire offence.

2 It is pointed out that applicant or his family does not have any past criminal record and they are farmers. Motor-cycle driven by husband of informant with informant riding pillion damaged water pipeline in the field of accused persons and there was some quarrel. That quarrel was separated by people. Thereafter the alleged incident has taken place.

3 Learned counsel for the applicant submits that the material on record is insufficient to connect the applicant with crime. However, even if such material is to be looked into, it does not show any intention to kill, and, hence, the applicant may be released on interim bail. He has already put in about five years in prison and there is no likelihood of Appeal being heard in near future.

4 Learned APP has invited our attention to the fact that after alleged quarrel was over, all three accused go to the residence of informant with handle of axe (wooden rod), spade, and, attacked deceased and injured. She points out that

charge was under Section 302 read with Section 34 of IPC and Section 307 read with Section 34 of IPC she also points out that trial Court has punished present applicant for these offences and accused nos.2 and 3 are also found guilty of offence punishable under Section 120B of IPC.

5 We have perused record. Accused nos.2 and 3 are convicted under Sections 302, 307 and 323 read with 34 of IPC and also under Section 120 B of IPC. The incident in the field about motorcycle giving dash and damaging motor pipelines and ensuing quarrel, was pacified. Present applicant was not there at that time. It appears that after accused no.3 returned home, he may have narrated the incident to other members in the family, and, thereafter as claimed by prosecution, accused persons proceeded to residence of deceased and his sister with spade and wooden rod. There was attack on head of deceased with iron spade. Prosecution claims that present applicant delivered blow of wooden rod on the head of husband of informant. In relation to this attack on head, charge under Section 307 read with 34 of IPC was framed and is found to be proved.

6 In this situation, we find no substance in the contention. Role of accused no.1 and accused nos.2 and 3 cannot be viewed separately at least at this stage. The application is, therefore, rejected.

(PRAKASH D. NAIK, J.) (B.P. DHARMADHIKARI, J.)