

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

CRIMINAL BAIL APPLICATION NO.911 OF 2019

Vijay Vasant Badade

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Satyvrat Joshi i/b. Virendra R. Ghorpade a/w Nitesh J. Mohite, Advocate for Applicant.
- Ms.A.A. Takalkar, APP for the State/Respondent.
- PN Mr.A.B. Mane, Saswad Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.271/16 registered with Saswad Police Station, Pune, under sections 302, 323, 341, 504, 506 r/w 34 of the Indian Penal Code.

2. The case pertains to murder of one Saurabh Satish Khomane, who was assaulted with wooden sticks on

30/12/2016 by the Applicant and three others. The Applicant was arrested on 04/01/2017 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The FIR is lodged by Sangita Satish Khomane, who is mother of the deceased. She has stated that on 30/12/2016 at about 08.45 a.m. she was going to a temple on a two wheeler driven by the deceased. When they had reached Anganwadi, two motorcycles intercepted them. The Applicant and three others got down from the motorcycles and started assaulting the deceased with wooden sticks. The informant was pushed away. One Aditya Jadhav tried to intervene, but he was ignored. After the assault, they left from that spot. After that, the informant and Aditya Jadhav removed the deceased to Dhanwantari Hospital, Saswad. In the hospital, the deceased succumbed to his injuries and thereafter this FIR is lodged.

4. Heard learned Counsel Mr.Satyvrat Joshi for the Applicant and learned APP Ms.A.A. Takalkar for the State.

5. Mr.Joshi submitted that the deceased was harassing the niece of the Applicant. The Applicant and others were brothers and cousins of the girl, who got angry and assaulted the deceased with wooden sticks. However, there was no intention to commit murder because none of the blow was given on his head. Though there was fracture of hand, the post-mortem notes show that the cause of death was because of the rupture of spleen. No other vital part of the deceased was attacked by any of the accused. Therefore, according to Mr.Joshi offence u/s 300 of IPC cannot be attributed to any of the accused including the present Applicant.

6. Learned APP opposed this application. She pointed out that the charge is already framed. She submitted that the intention and the role can be decided during the trial. At this stage, there is sufficient material to show complicity of the Applicant and therefore he does not deserve to be released on bail.

7. I have considered these submissions. I have perused the statement in the FIR which is supported by the statement of another eyewitness Aditya Jadhav, who is referred to in the FIR. He has also narrated the same incident as described by the first informant. He had helped the informant to remove the deceased to the hospital. Therefore at this stage, there is sufficient material to indicate that the Applicant and others had assaulted the deceased with wooden sticks. The post-mortem notes show that there were 11 injuries. Some of the injuries were in respect of the medical treatment. There was fracture of left hand, there were abrasions, contusion on scalp. The abrasions were small in number and dimensions. But one contusion was on the back below lower ribs, which was 15 cm x 7 cm in dimension which probably proved to be the fatal injury. There was no fracture of any ribs. The cause of death was mentioned as “death due to hemorrhagic shock due to hemoperitoneum due to splenic rupture”. Thus, out of the blows inflicted on the deceased, one blow had caused rupture of spleen causing his death.

8. I have perused the statement of niece of the Applicant. She has stated that the deceased was continuously harassing her. She was studying 10th standard. Her studies were getting disturbed. On a couple of occasions, he tried to hold her hand. In the midnight on 29/12/2016 and 30/12/2016 he had sent a message on her mobile phone. All this was told by her mother to her brother Vipul. Vipul in turn told this to the Applicant and his other cousins. All of them got angry and thereafter this incident had taken place.

9. Considering background of the case at this stage, it appears that, getting angry because of harassment caused to the Applicant's niece, they wanted to give heavy beating to the deceased. However, the nature of the injuries do not suggest that they wanted to commit his murder. No serious blow was given on his head. Even otherwise, he was not attacked on his vital parts. Therefore at this stage it is doubtful whether offence u/s 300 of IPC with requisite intention and knowledge is committed

by Applicants and others. However, it would be a matter of trial. At this stage, considering the fact that the Applicant is in custody since 04/01/2017, I am inclined to grant bail to the Applicant in the aforesaid circumstances. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.271/16 registered with Saswad Police Station, Pune, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)