

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

CRIMINAL BAIL APPLICATION NO.2235 OF 2019

Sachin Pandurang Gole

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Aniket Nikam i/b. Vivek N. Arote, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.
- PSI Mr.G.K. Shinde, Karmala Police Station, Solapur, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.103/19 registered with Karmala Police Station, Sangli, under sections 302, 324, 323, 504 r/w 34 of the Indian Penal Code and under section 135 of Maharashtra Police Act.

2. The Applicant was arrested on 20/03/2019. Since then he is in custody. Investigation is over and charge-sheet is filed.

3. The FIR is lodged on 09/02/2019 by widow, Sunita Umesh Bhosle, of the deceased Umesh Bhosle. She has stated that her husband Umesh was a fisherman and by selling fish he earned his livelihood. On 05/02/2019, at about 10.00 p.m., when the family of the deceased was in the house, at that time, the Applicant and one Pappu Ashok Janbhare came to their house. They wanted to buy fish. That time the deceased did not have fish and therefore he refused. The Applicant and his friend got enraged. They took away two sticks which the deceased was using while walking. The Applicant and his friend assaulted the deceased on his head, back, ribs, hands, legs and stomach. They also assaulted him with kicks and fist blows. When the informant tried to intervene, she was also assaulted. Her sister-in-law Asha was assaulted as well. Thereafter the Applicant and his friend left that house. Since it was a night time and there were only ladies in the house, the deceased was not immediately taken for medical treatment. On the next day with the help of others, the deceased was first taken to Jeur Government

Dispensary. Doctor advised to take him to Rural Cottage Hospital at Karmala. There, the Doctor treated him and asked the informant to take the deceased home. While going home; on the way, the deceased fell unconscious. Therefore he was taken to Shah-Javalekar Hospital at Karmala. That time, the Doctor saw that his health condition was precarious. Therefore he was sent to Shah-Javalekar Hospital. While he was being treated, he died on 08/02/2019 at about 10.45 a.m. Thereafter this FIR was lodged.

4. The investigation was carried out and the charge-sheet was filed. The charge-sheet contains statements of sister Asha, children Ishwar Umesh Bhosle and Guru Umesh Bhosle of the deceased. They have narrated the same incident as described by the first informant.
5. Heard learned Counsel Mr.Aniket Nikam for the Applicant and learned APP Mr.Prashant Jadhav for the State.

6. Learned APP opposed these submissions and added that the deceased required help while walking and using his sticks he was assaulted by the Applicant. Therefore the Applicant does not deserve any sympathy and does not deserve to be released on bail.

7. I have considered these submissions. The injury certificate issued by the Sub-District Hospital at Karmala shows that he had suffered three injuries. One was minor abrasion on forehead and there were two contusions over left side of back. Both these injuries were near each other. Significantly all these injuries were described as simple injuries. Unfortunately, the deceased died while he was taking treatment. Post-mortem notes show that he had suffered four injuries. Two injuries were healed abrasions and two injuries were contusions on the left side of the back. The cause of death was mentioned as “Death due to cardiorespiratory failure due to haemorrhagic shock due to massive bleeding in peritoneal cavity due to rupture of spleen i.e. shattered spleen.”

8. Thus, though it is obvious that the deceased had died because of these two injuries suffered by him at the hands of Applicant, at this stage, there is considerable force in the submissions of Mr.Nikam that no knowledge or intention can be attributed to the Applicant of causing such injuries which in ordinary course of nature would cause death of the deceased. The assault was on the back. Unfortunately, it landed at such a place which caused rupture of spleen. It is extremely doubtful whether offence u/s 302 of IPC is made out. However, ultimately, the trial Court will have to look into this aspect. At this stage, considering that two blows were given on the back of the deceased and the deceased had survived for some time and also since at the first instance even the Doctor had treated those injuries as simple injuries, I am inclined to grant bail to the Applicant. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.103/19 registered

with Karmala Police Station, Sangli, 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.)