

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

CRIMINAL BAIL APPLICATION NO. 2527 OF 2019

Mahendra Kaluram Memane	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Aniket Nikam i/b. Vivek N. Arote, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. A. B. Mane, P.N., Saswad Police station, 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. 228 of 2018 registered with Saswad Police Station, Pune on 27/06/2018. Initially, the offence was registered U/s.307, 504 and 506 of the Indian Penal Code. Subsequently, after the death of the deceased Dattatraya Lavande, section 302 of IPC was added. The applicant was arrested on 28/06/2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. The FIR is lodged by Sunita Lavande, wife of the

deceased Dattatraya. She has stated in her FIR that on 10/06/2018, the deceased had told her that he had gone with his friend Sandeep Pawar to meet the applicant. There was some transaction between Sandeep and the applicant. At that time, on some small issue there was heated exchange of words between the applicant and the deceased. On 18/06/2018 at around 5.30p.m. the deceased had returned home and at that time he complained of suffering pain in his stomach. On the next day, he was taken to a dispensary in Waghapur and thereafter to Urali Kanchan. However, there was no improvement in his health and, he, therefore, was shifted to Sassoon Hospital, Pune. On 20/06/2018 he underwent stomach surgery. He was kept in ICU. On 22/06/2018, for some time, he was in a position to speak. At that time, he told the informant that the applicant had assaulted him in his stomach in Waghapur chowk. Before the deceased could add something more, the Doctor came there and asked the informant to leave ICU because the patient was in precarious condition. As the informant came out, she told the police about what the deceased had told her. Thereafter, FIR was lodged.

3. The applicant was arrested on 28/06/2018 as mentioned earlier. The deceased died on 30/06/2018 and thereafter section 302 of IPC was added. The investigation was carried out and the charge-sheet was filed.

4. Heard Shri. Aniket Nikam, learned counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that, taking the prosecution case at its highest, offence punishable U/s.302 of IPC is not made out. The applicant had not used any weapon and the deceased had died due to 'septicemia'. He submitted that the applicant is in custody since 28/06/2018, therefore, he should be released on bail. Learned APP opposed this application and relied on the charge-sheet.

6. I have considered these submissions. Besides, oral dying declaration made to the wife, the deceased had narrated the incident to Sandeep Pawar on 18/06/2018. However, Sandeep's statement was recorded on 02/07/2018. Besides these two oral dying declarations, there is a statement of an eye witness Hanumant Korde who had seen the actual incident of assault. He

has stated that, on 18/06/2018 at about 4.15p.m. he saw that quarrel was going on between the applicant and the deceased. The applicant was assaulting the deceased with kicks and fist blows. The applicant was wearing shoes at that time. Thus, at this stage, the injuries can directly be attributed to the assault made by the applicant. The Postmortem notes show that there were 11 injuries on the dead body, however, most of those injuries were surgical wounds except abrasions on the chest and abdomen. The internal injuries show that there were per-gangrenous spot in the intestine besides other complications in the intestine. The Postmortem notes records opinion of the Medical officer as, "Evidence of blunt trauma to abdomen, viscera preserved for histopathological examination, opinion reserved till reports of histopathological examination are submitted.

7. Learned counsel for the applicant has tendered a report showing final cause of death which is mentioned as, "Death due to Septicemia". The pathology report also shows that the deceased had suffered from pneumonia. Thus, it appears that, though, the assault on the deceased ultimately proved to be fatal,

but the applicant had not assaulted the deceased with weapons. The applicant had allegedly assaulted with kicks and fist blows. The applicant was wearing shoes at that time which caused more damage. The deceased had left that place on his own and had returned home. He survived for a few more days. On that day itself he himself did not make any complaint against the applicant which shows that the applicant had not assaulted with an intention of causing death or such injury to the deceased which in all probability would cause death. Even it is difficult to attribute knowledge to the applicant that his act would cause such injury, however, this fact will be determined only during the trial. At this stage, there is a reason to believe that the offence may not amount to 'murder' as defined in section 300 of the IPC. It could be a lesser offence. The incident had taken place near the shop of the applicant. That also shows that the applicant was not an aggressor. The applicant is already in custody since 28/06/2018. The investigation is over. No further purpose will be served by keeping him in custody. Therefore, I am inclined to grant bail to the applicant.

8. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 228 of 2018 registered with Saswad Police Station, Pune, the applicant is directed to be released on bail 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.)