

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

BAIL APPLICATION NO.3287 OF 2019

Deelip @ Amol Shahaji Ghotane	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Kunal V. Patil i/b. Mr.Prashant P. Raul, Advocate for the Applicant.

Mr.S.H. Yadav, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 29, 2020.

P.C. :

The applicant is seeking bail in connection with C.R.No.41 of 2019, registered with Kodoli Police Station, District-Kolhapur, for the offences punishable under Sections 307, 394 and 364 read with 34 of Indian Penal Code (“IPC”, for short). Subsequently, Section 302 of IPC was invoked. First Information Report (“FIR”, for short) was lodged on 2nd March, 2019.

2 FIR was lodged on the statement of Bharat Anandrao Shinde. It is alleged that on 26th February, 2019, at about 6:00 p.m., while the first informant and his brother was proceeding

towards village Bambavade in Maruti 800 car, the accused stopped them. Accused Shahaji Ghotane was armed with axe, Baburao Ghotane and Amol Ghotane were armed with sickles. Accused Babaso Ghotane opened the door of the car and pulled the complainant/injured out of the car. At that time Babaso Ghotane stated that the complainant should not be left alive and he should be finished. He tried to assault the complainant by kick blow on his head. The complainant managed to dodge the assault, however, the blow rested on the left leg of the complainant resulting into injury. The complainant was accompanied by his brother Sharad Shinde. He tried to intervene. Shahaji Ghotane gave blow by wooden handle of the axe on the hand of Sharad. On hearing the shouts, people started gathering. However, accused threatened them of dire consequences. Hence, they ran away from the place of incident on account of fear of the three accused. The accused then assaulted complainant by weapons on his legs, eyes, hands and waist. He sustained several injuries. Accused Babaso Ghotane and Amol Ghotane dragged the complainant on the road and made him to sit on their motorcycle. He was taken in front of their house and tied to the pole. Thereafter, the complainant was again assaulted from the blunt side of sickle on his head, back and thigh. On noticing this several people

gathered. However, at that time, the accused intimidated them by showing that they should understand the repercussions if they try to help the complainant. Accused also took cash from his pocket. After some time Shahji Ghotane came to the place of incident. He assaulted complainant by wooden handle of axe. FIR was registered. Injured was taken to hospital. His statement was recorded. FIR was recorded on 2nd March, 2019. Statements of witnesses were recorded. Statement of brother of the complainant was recorded. The injury certificate form the part of charge-sheet. Subsequently, injured was again admitted in hospital on account of blood clots. He died on 20th May, 2019. On completing investigation charge – sheet is filed.

3 Learned advocate for the applicant submitted that the witness have given exaggerated version. The complainant has sustained simple injuries. Charge under Section 302 of IPC is not attracted in this case. The cause of death of the deceased was not related to the assault. He was not subjected to assault on his head. The deceased died on 20th May, 2019. the incident was dated 26th February, 2019. At the time of death of the deceased, the brother of the deceased did not lodge any complaint and had stated that he do not suspect any person, however, in the

supplementary statement, he has attributed involvement of the applicant and other accused. There is delay in lodging the FIR. Section 302 of IPC would not be attracted as the alleged blows were not given on the vital part of the body. The injured was discharged from the hospital. He died subsequently and the cause is not connected with assault. Brother of the complainant had sustained minor injuries. Applicant is in custody from 8th June, 2019. Investigation is completed and charge-sheet is filed.

4 Learned APP submitted that the offence is of serious nature. The complainant was subject to brutal assault. He was assaulted by all the three accused mercilessly. There is dispute between both the sides. The manner in which the complainant was assaulted depicts the cruel mind of the accused. The deceased has complained about headache. There was bleeding in the brain. The cause of death of the deceased is relating to the assault. There are eye witnesses to the incident. Hence, bail should not be granted to the applicant.

5 On perusal of the documents, it can be seen that there is rivalry between the complainant and the accused on account of electric motor of the well. On the day of incident, the

accused intercepted the car of the complainant. He was dragged out from the car. The accused were armed with deadly weapons like axe and sickles. Applicant was armed with sickle. Victim was assaulted. Injured was hospitalized. Statement was recorded on 2nd March, 2019. Thus, it cannot be said that recording of FIR on that day is fatal to the prosecution. The accused had assaulted the deceased mercilessly on various parts of the body. After brutal assault, he was dragged on the road and was taken to another place. He was tied to the electric pole and again brutally assaulted by the accused. The injury certificate indicates that he had sustained 28 injuries on his body. In the presence of the family members of the deceased, victim was assaulted. The brother of the complainant had also sustained injury. The cause of death is mentioned as infarct with brain stem failure with cardio respiratory arrest. In the statement of brother of the complainant, it is mentioned that the death was due to excessive bleeding in the brain. Learned Sessions Judge while rejecting the application observed that the question whether the death was due to injury would be finally decided after evidence is led by the prosecution. Assuming that deceased died on account of different cause, considering the manner in which the accused had assaulted the deceased, no case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.3287 of 2019, is rejected;

(PRAKASH D. NAIK, J.)