

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

BAIL APPLICATION NO.3198 OF 2019

Ashitosh Shivaji Devekar

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Kedar Jaysing Patil, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 3, 2020.

P.C. :

Applicant is arrested on 5th July, 2019 in connection with C.R.No.158 of 2018, registered with Shahapur Police Station, District-Kolhapur, for the offence punishable under Section 302 read with 34 of Indian Penal Code ("IPC", for short).

2 First Information Report ("FIR" for short) was lodged by the mother of the deceased on 5th July, 2019. The case of the prosecution is that deceased is the father of the

applicant and husband of accused no.1. The deceased and accused no.1 were married for 40 years. Out of the wedlock, they have three children. There were disputes between the deceased and accused no.1 (wife). She had left the matrimonial home 10 years ago and she again joined matrimonial home two years prior to this incident. There used to be quarrels between the deceased and accused no.1. It is also case of the prosecution that the deceased used to consume alcohol and there was frequent quarrels between him and accused no.1. he was suspecting character of accused no.1. Due to quarrels, complainant and deceased started living in one room and accused no.1 and children lived in other room. On 5th July, 2019, the deceased had consumed alcohol. The deceased had picked up quarrel with accused no.1. When the applicant returned home, there was quarrel between applicant and deceased. The deceased started throwing utensils and carried the Television outside the house and threw it on the ground. At that time, the applicant had assaulted the deceased with wooden batten and at the same time the accused no.1 also assaulted him with stone, which was lying near the place of incident. During the course of investigation, statements of

various witnesses were recorded. On completion of investigation charge-sheet is filed.

3 Learned counsel for the applicant submitted that the cause of incident is frequent quarrels and harassment caused by the deceased to the entire family. This fact is borne out from various statements of the witnesses. On 13th March, 2019, accused no.1 had lodged complaint against deceased under Sections 323, 504 and 506 of IPC. On 14th March, 2014, action was taken against deceased under Section 107 of Cr.P.C. It is submitted that the incident had occurred at the spur of moment. The wooden batten was allegedly used for assaulting the deceased. The accused no.1, who is the mother of the applicant had also picked up stone lying there in and allegedly assaulted the deceased. The applicant is handicapped person. Reliance is placed on Disability Certificate annexed to the application. It is submitted that the version of the witnesses is that one blow was given by the applicant. It is submitted that taking the prosecution case as it is, there was no intention to commit murder. The incident had occurred on account of grave and sudden provocation.

4 Learned APP submitted that the victim had sustained several injuries. Statements of the witnesses indicate that the blow was forceful, which has resulted in serious injuries on head of the victim.

5 Applicant is in custody from the date of arrest. The incident had occurred at spur of moment. The statements of witnesses indicate that there used to be frequent quarrels between the deceased and accused no.1. During the course of investigation, accused no.1 is arrested and she is in custody. On 5th July, 2019, there was a quarrel between accused no.1 and the deceased. It was followed by subsequent quarrel. The applicant had allegedly assaulted by wooden batten, which was lying in the vicinity and the other accused had assaulted by stone. It is debatable whether there was intention to commit murder. The issue would be decided at the trial. There are no antecedents against the applicant. In the factual matrix of the case, bail can be granted to the applicant.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.3198 of 2019, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.158 of 2018, registered with Shahapur Police Station, District-Kolhapur, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall attend the concerned police station once in a month on first Saturday of the month, between 11:00 a.m. to 12:00 noon, till conclusion of trial;
- (iv) Applicant shall not enter the premises where the complainant is residing, till the conclusion of trial;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)