

Shambhavi
N. Shivgan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3278 OF 2019
alongwith
INTERIM APPLICATION NO. 1 OF 2020

Motiram Laxman Shelawale ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Amin Solkar, Advocate for the Applicant.
Ms. P.P. Shinde, APP for the Respondent-State.

CORAM : SANDEEP. K. SHINDE, J.
DATE : 1st DECEMBER 2020.

P.C.

1. Heard.
2. Applicant 70 year old, farmer, seeks enlargement on bail in Crime No. I – 57 of 2017 registered with the Kulgaon Police Station, for the alleged offence punishable under Section 302 of the Indian Penal Code, 1860.

3. Alleged motive is, the subsisting dispute between the applicant and the deceased over a right way, since deceased and the applicant own adjacent farms. On 5th October, 2017, complainant (wife of the deceased) was informed by 'one person', that her husband (deceased) had been administered poison by one Motiram Shelawale (applicant herein). Immediately her daughter-in-law and other relatives rushed to Morado Road. They found the deceased was sitting in auto-Rickshaw and froth was coming out from his mouth. It is alleged deceased disclosed to wife, that applicant had administered the poison to him. Admittedly the alleged incident had occurred at 09:30 am., however, report was filed on the same day at 07:00 pm.

4. On this report, the applicant came to be arrested and since then he is in jail. Investigation of the case is over and the charge-sheet has been filed.

5. Learned Counsel for the Applicant has taken me through the charge-sheet. It appears the applicant was first admitted in the Health Care Hospital at about 10:45 am. and discharged

against the medical advice at 01:00 am., on the same day i.e. 5th October, 2017.

6. Learned APP has heavily relied on the discharge summary, to contend that it discloses a fact, that the applicant had administered poison to the deceased. I have perused the discharge summary. It does not disclose name of the applicant but only mentions and suggests that applicant's farm is adjacent to the farm of the deceased. Learned APP further contended that the case diary entry at 11.30 hrs. dated 5th October, 2017 suggests that when the police visited the Health Care Hospital, doctor divulge that deceased told him about incident of poisoning by the applicant. Therefore, prosecution has relied on more than one oral dying declaration; one made to wife and another to doctor, by the deceased.

7. Be that as it may, neither medical case papers, nor the discharge summary of the hospital suggest that applicant had administered the poison to the deceased. In consideration of the facts, prima facie, even assuming that applicant had administered poison to the deceased, nothing prevented doctor

or the wife of the deceased to disclose, this fact to police or to mention it to doctor, when deceased was admitted in the hospital at 10:45 am.

8. That even otherwise, a letter/ memo addressed by doctor to police officer at 11.15 hrs. does not mention that wife of the deceased had disclosed him that the applicant had administered poison to the deceased.

9. Though the prosecution has relied on the statements of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973, including that Rickshaw driver and such other witnesses, fact remains that the statements were recorded after registration of the offence.

10. Herein, complainant (wife of the deceased) was informed by 'one person' that the applicant had administered poison to her husband (deceased). The prosecution till date could not identify or trace whereabouts of that 'one person'. No justifiable reason is coming forth for not tracing that 'one person'. A fact cannot be ignored that 'one person' who had

informed the incident was obviously knowing deceased, his family and applicant too. In fact he is a 'key' person, who would know the incident in details than any other witnesses. Thus the important link is missing in the prosecution case.

11. Be that as it may, the applicant is in the jail for three years. He is a 70 years old, ex-serviceman. There are no eye-witnesses to the alleged incident of administering the poison by the applicant to the deceased. Though, the offence is punishable with imprisonment for life or death, in my view, a case is made out for releasing the applicant on bail. Hence the following order.

ORDER

- (i) The applicant is directed to be released on bail, on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (ii) The applicant shall furnish his residential address as well as permanent address and contact details to the investigating officer within seven days from today;

(iii) The applicant shall not live in the village till the charge is framed;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant shall report to the Ambarnath Police Station once in a fortnight between 11:00 am to 01:00 pm.;

12. The bail application alongwith interim application is disposed of.

13. It is made clear that the observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP. K. SHINDE, J.)