

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL APPLICATION NO. 488 OF 2021
IN CRIMINAL APPEAL NO. 89 OF 2021

VIJAY MOTILAL RATHOD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent-State : Mr. S.D. Ghayal

...
CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.

DATE : 14th JULY, 2021

PER COURT :-

1. Pending the Criminal Appeal No. 89 of 2021, preferred against the Judgment and Order of conviction passed by Additional Sessions Judge, Court No. 11, Aurangabad, convicting thereby accused No. 1 - Raju Motilal Rathod and present applicant/original accused No. 2 - Vijay Motilal Rathod for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced them to suffer imprisonment for life, the applicant – original accused No. 2 has preferred this application for suspension of substantive part of sentence and also releasing him on bail.

2. Learned counsel for the applicant-original accused No. 2 submits that the role attributed to the applicant is limited to the extent that he extended beating to the deceased with fist and kick blows. The trial

Court has convicted the applicant-original accused No. 2 with aid of Section 34 of IPC. Learned counsel submits that during the trial, the applicant-original accused No. 2 was on bail and he has never jumped the condition of bail. Learned counsel submits that there is no evidence suggesting that accused No. 2 had knowledge that accused No. 1 Raju was carrying a knife with him and he was likely to be assaulted to deceased with the help of knife. Learned counsel further submits that even in the post mortem examination report, except stab injury and incised wound, there are no other injuries to the deceased, as per column No. 17 of the post mortem report.

3. Learned APP strongly resisted the application on the ground that there are eye witnesses and as per ocular evidence, accused No.1 Raju and present applicant-original accused No. 2 went towards the house of deceased together and then incident had taken place. It has also deposed by the eye witnesses that accused No.1 Raju called deceased Sominath outside his house and thereafter assaulted him by using knife. Learned APP submits that no case is made out for bail. Application may be rejected.

4. We have carefully gone through the notes of evidence, more particularly, the evidence of PW-1, PW-2 and PW-5 i.e. eye witnesses to the incident. We find that the role attributed to the applicant-original

accused No. 2 is to the extent that he extended beating to the deceased by fist and kick blows. It also appears that on reaching to the house of deceased, original accused No.1-Raju has called the deceased out side his house and immediately thereafter assaulted him with help of knife. Thus, considering the role ascribed to the present applicant- original accused No. 2 and he was on bail during the trial, we are inclined to release him on bail. Hence, we pass the following order.

:: ORDER ::

- (i) The Criminal Application is allowed.
- (ii) Pending the hearing and final disposal of the Criminal Appeal No. 89 of 2021, substantive part of the sentence passed by the learned Additional Sessions Judge, Court No. 11, Aurangabad, dated 27-01-2021 in Sessions Case No. 112 of 2017 to the extent of applicant- original accused No. 2 - Vijay Motilal Rathod stands suspended and till then applicant - accused No. 2 - Vijay Motilal Rathod be released on bail on furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety of the like amount.
- (iii) The Criminal Application is disposed of.

(S. G. DIGE)
JUDGE

(V. K. JADHAV)
JUDGE