

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**936 CRIMINAL APPLICATION NO.1188 OF 2020
IN APEAL/530/2020 WITH APEAL/530/2020**

**RAOSAHEB RAMA NIKAM
VERSUS
THE STATE OF MAHARASHTRA**

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Mr.D.B. Thoke, Advocate for the applicant.
Mr.G.O. Wattamwar, APP for the
respondent/State.

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

DATE : 30TH JUNE, 2021

PER COURT :-

. Heard.

2. Pending the appeal preferred against the judgment and order dated 07.01.2020 passed by the learned Additional Sessions Judge, Jalgaon in sessions Case No.82 of 2017, thereby convicting the applicant-original accused under section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.50,000/-, in default of payment of fine, to suffer simple imprisonment for a term of three and half years, the applicant

has preferred this application for suspension of substantive sentence and bail.

3. The learned counsel for the applicant – original accused submits that the crime came to be registered on the basis of the complaint-cum-dying declaration of the deceased Dipak. The learned counsel submits that the applicant and deceased Dipak are real brothers *inter-se*. The learned Judge of the trial Court has observed in the judgment itself that the said complaint-cum-dying declaration of the deceased is not proved by the prosecution beyond doubt. The learned counsel submits that according to the prosecution, PW-14-Nikhil is the only eye witness to the incident and the trial Court has believed the said witness. The learned counsel submits that neither the statement of the said witness PW-14 Nikhil recorded during the course of investigation nor he was cited as witness by the prosecution. Only on the basis of the application filed by the learned A.P.P. before the trial Court under section 311 of the Code of Criminal Procedure, the said witness has been called in the Court and came to be examined. The learned counsel submits that even the trial Court has not

taken care to direct the Investigating officer to record the statement of PW-14-Nikhil under Section 161 of the Code of Criminal Procedure. The learned counsel submits that PW-14 Nikhil, who was examined before the Court two years after the incident, is a minor son of the deceased. There is every possibility of tutoring, however the trial Court has not considered the same and believed the said witness.

4. The learned A.P.P. submits that though PW-3-Anita technically is not eye witness, however, immediately after hearing the hue and cry, she rushed towards the spot of the incident along with other persons and noticed that the present applicant was holding a blood stained knife in his hand. The learned A.P.P. submits that the prosecution case entirely rests upon the direct evidence. PW-3 - Anita has also given reference to PW-14 - Nikhil. PW-3 Anita has deposed that she heard the hue and cry of PW-14 - Nikhil and she rushed to the 1st floor, where the incident has taken place. The learned A.P.P. submits that even PW-3 - Anita had a talk with PW-14 - Nikhil at that time. The learned A.P.P. submits that the

witness has rightly called by the trial Court on the basis of the application submitted by the learned A.P.P. under section 311 of the Code of Criminal Procedure. Though he is eye witness to the incident for the reasons best known to the Investigating Officer, his statement was not recorded during the course of investigation.

5. We have carefully gone through the judgment and order of conviction passed by the trial Court. We have also perused the notes of evidence, particularly the depositions of PW-3 – Anita and PW-14-Nikhil. Before that we need to mention here that as per the evidence of PW-13 Dr.Sachin Ingle, the deceased Dipak had seven injuries on his person when he was admitted in Apex Hospital. Out of those injuries, four injuries are incise wounds. PW-3 – Anita has deposed that at the time of alleged incident, there was shouting. PW-14-Nikhil informed her that Baba beaten to his father Dipak (deceased). According to PW-3 Anita, she rushed towards first floor of the building along with some other witnesses. She had seen in the hands of the applicant – accused one knife having blood stains and at that time, the deceased

Dipak was lying on the surface of land and his cloths were having blood stains. Even according to PW-3 Anita, deceased Dipak has made oral dying declaration to her that the applicant had beaten to him by knife.

6. Though the learned counsel for the applicant has vehemently submitted about the physical condition of the deceased Dipak and the admissions given by the medical witness on this point, however, we can not ignore the evidence of PW-14 – Nikhil. His name was referred by the witness PW-3-Anita, who arrived at the spot immediately after the incident. It appears that for a very trifling reason the present applicant has inflicted the injury on the vital organ of Dipak with the help of knife. We are thus not inclined to release the applicant on bail.

7. It is made clear that the above stated observations are prima facie in nature and the learned counsel for the applicant would be at liberty to point out other evidence and the conduct of the deceased, so also the witnesses before and after the incident. Hence the following order :-

ORDER

The application is hereby rejected.

(S.G. DIGE, J.)

(V.K. JADHAV, J.)

SGA