

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1259 OF 2020**

Mhalappa Mariyappa Galave
Versus
The State of Maharashtra

...Applicant

...Respondent

Mr. Ashok Mundargi, Senior Counsel a/w Ms. Tanvi Tapkire for the Applicant.

Mr. H.J.Dedhia, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 15th SEPTEMBER, 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 72 of 2020 registered with the Umadi Police Station, Sangli, for the alleged offences punishable under Sections 302, 307, 324, 323, 452, 427, 504, 506, 143, 147, 148, 149 of the Indian Penal Code.
3. Learned Senior Counsel for the applicant submits that the

applicant and the complainant's family are all related and residing in the same vicinity. He submits that there is a land dispute between the applicant's family and the complainant's family. Learned Senior Counsel for the applicant further submits that with respect to the incident dated 31st March, 2020, there is a cross FIR lodged by the applicant's side i.e. C.R.No. 76 of 2020 as against three persons including the deceased for the alleged offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code. He submits that all other accused in the present C.R. i.e. original accused Nos.2 to 5 have been released on bail. He submits that the allegations as against the applicant is that he lifted the deceased and threw him on the ground, as a result of which, he allegedly sustained a head injury and succumbed to the same later. Learned Senior Counsel for the applicant submits that taking the prosecution case as it stands, no offence under Section 302 of the Indian Penal Code is made out, as against the applicant.

4. Learned APP opposes the application.

5. Perused the papers. The incident in question is alleged to have taken place on 31st March, 2020 at about 9.00 p.m. According to the complainant - Vilas Appa Galave, there was a land dispute between his

family and the applicant's family inasmuch as, they were co-sharers and were jointly owning agricultural land bearing Gat No. 8, measuring 2.5 acres, in Gondhalewadi. According to the complainant, on the day of the incident i.e. on 31st March, 2020, at about 9.00 p.m., the applicant came there and told Sushant (deceased) who was sitting outside the house that, if the land truly belonged to him, they should keep it, but if it did not belong to them, they should return it. It is alleged that when the applicant stated abusing and assaulting Sushant (deceased), and when the complainant alongwith his mother - Anusaya, uncle and aunt tried to intervene, the co-accused Eknath, Birappa, Tukaram and Pandurang came towards them and started assaulting them with sticks. Ekanath (accused No.4) is alleged to have assaulted the complainant with a stick on his right hand and co-accused Birappa, Tukaram and Pandurang are alleged to have also assaulted with sticks. It is further alleged that while assaulting Sushant with a stick, the applicant picked him and threw him on the ground, as a result of which, Sushant sustained an injury on his head and became unconscious. Sushant was thereafter, taken to a hospital, where the doctor informed that his condition was serious. The statement of the said doctor shows that Sushant although unconscious, had no external injuries on his person. Thereafter, Sushant was taken to the Miraj Mission Hospital, where he was admitted. Sushant succumbed to his injuries on 1st April,

2020.

6. With respect to the same incident dated 31st March, 2020, there is a cross FIR lodged by one of the co-accused in the present C.R. i.e. Eknath Galave (Original accused No.1 in the present C.R.). According to Ekanath Khandu Galave, Sushant (deceased) and Vilas were the aggressors and that they assaulted him and others with sticks. The said C.R. lodged by Ekanath, is for the offences punishable under Section 324, 323, 504, 506 r/w 34 of the Indian Penal Code. It appears that in the said incident, three persons from the applicant's side including the applicant also sustained injuries. Birappa Galave (accused No.5 in the present C.R.) is alleged to have sustained 8 injuries. All the said injuries are simple and are stated to have been caused by hard and blunt object. The said injuries are on forehead, below eye, hand, ear, foot, toe, back and shoulder. Mhalappa (applicant/original accused No.1) is also stated to have sustained four injuries i.e. on his chest, elbow, leg and buttock. The said injuries were stated to have been caused by hard and blunt object and are stated to be simple in nature. Eknath (Original accused No.4) is also stated to have sustained two injuries with a hard and blunt object on the shoulder and on the occipital region.

7. As far as the deceased is concerned, it appears that when he was first examined by Dr.Jadhav, Dr. Jadhav found that he was in an unconscious condition and there were no external injuries on his person. However, considering his condition, he has asked to be taken to another hospital. The post mortem report of Sushant reveals that he had sustained the following two injuries on his person i.e. one contusion on the left knee and one contusion over the right parietal occipital region. On internal examination, it appears that the deceased had sustained a depressed comminuted fracture of size 5 cm x 2 cm present over right parieto-occipital region with upper fracture line extending upto base of right temporal bone, bony margins blood infiltrated. The probable cause of death is stated to be head injury.

8. Considering the aforesaid facts, the fact that the applicant has no antecedents and that all other co-accused in the present case have been enlarged on bail, further detention of the applicant is not warranted. Whether or not an offence under Section 302 of the Indian Penal Code is made out or not, is a matter, which will be decided by the trial Court during trial.

9. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month, between 10:00 a.m. to 12:00 noon, till the filing of the chargesheet;
- (iii) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any

person concerned with the case;

10. The application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.