

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3383 OF 2021

AKSHAY DATTATRAYA NETAKE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Priyal G. Sarda, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th OCTOBER 2021
PRONOUNCED ON : 29th OCTOBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.229 of 2017 registered with Police Station Khed, for offences punishable under Section 143, 147, 148, 149, 307,302, 323, 504, 506 of the Indian Penal Code (IPC).

2 It is the case of prosecution that on 23rd June 2017 present applicant along with other accused on account of previous enmity assaulted the informant's husband namely Madhukar Netake (since deceased) by means of iron rods, sticks and axe. It further appears from the record that during the course of treatment the said deceased succumbed to the injuries.

3 Mr.Priyal Sarda, learned counsel for the applicant, submits that arising out of the same incident, a counter First Information Report (FIR) came to be filed because of enmity in between the parties and the applicant has been falsely implicated. Moreover, at the time of alleged incident, the applicant was only 18 years old. Investigation is over and there is no necessity of custody of the applicant. For all these reasons, the applicant deserves to be released on bail, argued learned counsel.

4 Mr.Dedhia, learned APP, on the other hand, opposed the submissions by contending that deadly weapons were used by

the applicant and other accused who not only formed an unlawful assembly but also assaulted by means of rods, sticks, axe resulting into death of the deceased. They also inflicted injuries on eye witnesses. There being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers. Admittedly, there is FIR and counter FIR arising out of the same incident. I have carefully gone through the contents of the FIR. The role played by the present applicant is major one in as much as he was armed with iron rod and assaulted the deceased on his head along with others and also on other parts of the body. The FIR finds support from statements of mother and son of the deceased and neighbour, namely, Santosh Kadam. The complicity of the present applicant is writ large in the commission of the offence. I have also gone through the postmortem report which also shows the number of injuries sustained by the deceased.

6 During the course of argument, learned counsel for the applicant submitted that the assault was not the immediate cause of death but septicemia which is apparent from the information given by the Autopsy Surgeon in the postmortem report. If the conclusion of the Autopsy Surgeon is to be read in proper perspective, the opinion as to the cause of death given is septicemia in the operated case of head injury. One cannot prima facie lose sight of the fact that the septicemia developed because of the head injury and it was not independent of head injury sustained by the deceased. Therefore, I do not find any force in the submissions of the learned counsel.

7 It is also to be noted here that the applicant along with other accused not only formed an unlawful assembly but they were all armed with deadly weapons and launched the assault on the person of the deceased and also other prosecution witnesses, whose medical certificates are also filed on record.

8 For all the aforesaid reasons, I am not inclined to allow the present application. Hence, the following order :

ORDER

The application is rejected.

(V. G. BISHT, J.)

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