

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.1509 of 2019****IN****CRIMINAL APPEAL NO. 1651 of 2019**

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Bapurao Bhanudas Salunkhe & ors. ... Applicants

V/s.

The State of Maharashtra ... Respondent

Ms.Vilasini Balsubramaniam i/b. Mr. Jaydeep Mane for the applicants.
Ms. M.M. Deshmukh, APP for the State.

**CORAM : PRASANNA B. VARALE
& S.M. MODAK, JJ.**

24th February 2021.

P.C.

The learned counsel for the applicants submitted that the applicants have raised substantial grounds in the appeal and have every hope of success in the appeal. It is submitted by the learned counsel that the learned trial Court failed to appreciate the basic facts namely inordinate delay in lodging the First Information Report. It is also submitted by the learned counsel that medical evidence is not properly

appreciated by the learned Trial Court. It was submitted by the learned counsel that the Autopsy Surgeon while giving his opinion in the postmortem report referred to the injuries and there are only two simple injuries. The learned counsel then submitted that even assuming and not admitting the case of the prosecution as it is, the allegations against the applicants are of giving fist and blows and use of a electric cable. It is submitted by learned counsel that the applicants have not used any weapon in the commission of the offence nor used any excessive force against the victim. The learned counsel for the applicants then submitted that the applicants were enlarged on bail during the pendency of the appeal and have not committed any act of breach of the conditions imposed upon the applicants. Thus, the applicants have not misused the liberty granted to them. It was also submitted by the counsel for the applicants that the appeal being filed recently i.e. in the year 2019, it will take considerable length of period to hear and dispose the appeal on merits and the applicants who are agriculturists by occupation and their only source of livelihood is agriculture, keeping the applicants behind bars for indefinite period would be a sufferance caused to the family members of the applicants who are the dependents of the applicant.

2. The learned APP vehemently opposing the application submitted that the prosecution has brought on record sufficient evidence. It is

also submitted by the learned APP that the delay is properly explained in the substantive evidence before the Court. It is also submitted by the learned APP that though there is a reference of two injuries but the Autopsy Surgeon makes a reference to the internal injuries and it is stated in the deposition of Autopsy Surgeon – PW No.6 Dr. Girnar that on opening thorax he found **(i)** fracture 10th rib medial 1/3rd on left side tearing of legamentous connective tissue at the joint of rib and sternum; **(ii)** Pericardium appeared bluish brown in colour bulging and on cut section about 200 to 300 cc blood with clots present in pericardium due to haemopericardium; **(iii)** Heart at base inferior wall there was contusion with blood clots present on heart surface; **(iv)** Intramyocardial fibres in the myocardium ruptured; **(v)** Minor perforations at the apex and base of heart about 0.5 x 0.5 cm.; **(vi)** Ventricles and aorta empty.

3. Then it is submitted by the learned APP that it was only an advance certificate but even then PW No.6 while providing his opinion in respect of cause of death specifically stated the cause is 'due to acute cardio respiratory arrest, due to cardiac tamponade due to haemopericardium'. Thus, it is the submission of the learned APP that the medical evidence fully supports the case of the prosecution. The learned APP then submitted that the prosecution has also brought on record an independent witness PW No.3 - Sitaram who is an eye

witness of the incident and his version is truthful action of the incident.

4. On considering all rival submissions of learned counsel appearing for the applicants as well as learned APP, though we find some merit in the submission of learned APP insofar as evidence in the form of Autopsy Surgeon and independent witness is concerned, at the same time we cannot lose sight of fact namely the way the alleged attack on the victim and the applicants were enlarged on bail during pendency of the appeal and there is no contra material to show that the applicants have misused the liberty granted to them. Thus, there is merit in the submission of learned counsel for the applicant that assuming the case of the prosecution, the applicants have not used any weapon for commission of offence nor used excessive force on the victim. There is also merit in the submission of learned counsel for the applicants that the applicants are mainly the agriculturist and it will take considerable length of time for hearing the appeal finally in view of the fact that there are old appeals pending in this Court for hearing and disposal. Considering these aspects, we are of the opinion that the learned counsel for the applicants made out the case of allowing the application.

5. The Application is allowed. Applicants are granted bail on same terms and conditions as they were in the trial. Needless to state that

applicants to submit fresh bail bonds.

6. Application is accordingly disposed of.

S.M.MODAK, J

PRASANNA B. VARALE, J

L.S. Panjwani, P.S.