

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

**CRIMINAL APPLICATION NO. 224 OF 2022 IN
CRIMINAL APPEAL NO. 28 OF 2022**

Ramrao Kishanrao Jadhav

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Mayur V. Salunke, advocate for the applicant
Mr. S. D. Ghayal, APP for the Respondent.

**CORAM : V. M. DESHPANDE AND
SANDIPKUMAR C. MORE, JJ.**

DATE: 21st April, 2022.

PC :

1 This is an application for suspension of substantive sentence and for grant of bail.

2 The applicant stands convicted by the learned Additional Sessions Judge-2, Parbhani, by judgment and order dated 23.11.2021 in Sessions Trial No. 100 of 2020. After recording the finding of guilt for the offence punishable under Section 302 of the Indian Penal Code, the learned Judge has sentenced the applicant to suffer life imprisonment.

3 The appeal was admitted by this Court on 24.02.2022 and Record & Proceedings were also called and it was directed that the present application shall be considered after receipt of Record & Proceedings.

4 Accordingly, Record & Proceedings are received and those are placed before this Court for consideration of this application.

5 We have heard Mr. Mayur Salunke, learned Counsel for the applicant and Shri Ghayal, learned A. P. P. for the State in *extenso*. With their able assistance, we have gone through the relevant evidence and documents which are necessary for consideration of the present application.

6 The applicant and deceased Sheshrao are real brothers. The incident in question has occurred on 19.05.2020 at about 07.30 p.m. The criminal law was set into motion by the widow of deceased, namely Savitrabai by giving her oral report on 20.05.2020 (Exhibit-24). After the arrest of the applicant and after completion of usual investigation, charge sheet has been submitted by the Investigating Officer before the learned Sessions Court. In

all six witnesses were examined and after appreciating the evidence, the learned Judge has passed the impugned order.

7 As per the prosecution case, there are two eye witnesses, they are Savitrabai - widow of the deceased and Surekha - the married daughter of the deceased. One Ritesh was examined as *pancha* witness in whose presence spot *panchanama* (Exhibit-32) was recorded. Dr. Kishan Naik (P. W. 4) is a doctor who has conducted autopsy on the dead body of Sheshrao. He has proved the *post mortem* report, which is at Exhibit-40.

8 From the evidence and the First Information Report, it is clear that the incident in question has occurred on account of the quarrel erupted in between the deceased and the applicant on the issue of grazing goats. Nothing could be spelt out, at least *prima facie*, from the evidence of P. W. 1 and P. W. 2 that there was a long standing dispute or quarrel in between the deceased and the applicant.

9 Be that as it may. According to the learned Counsel for the applicant, though the prosecution has cited the widow of the deceased and his married daughter as eye witnesses, it is his

submission that if their evidence is examined in the light of the evidence of P. W. 3 - Ritesh, in whose presence the spot *panchanama* was recorded and the recitals in the spot *panchanama* (Exhibit-32) and the sketch map, which is the part and parcel of the spot *panchanama*, they are the chance witnesses. Of course, the learned A.P.P. has vehemently opposed this submission by making a submission that there was no reason for these two ladies to falsely implicate the applicant.

10 According to Exhibit-24, the oral report, the incident in question has occurred in front of the house of the present applicant. The First Information Report recitals further show that the incident was seen by the first informant Savitrabai in the electric light. Similarly, as per the evidence of P. W. 2 - Surekha, the incident in question occurred in front of the door of house of the applicant. In that context, it would be useful to have a glance at the sketch map drawn during the course of executing the spot *panchanama* (Exhibit-32). The said *panchanama* is duly proved by P. W. 3 - Ritesh. From the sketch map, it is crystal clear that the incident in question has occurred in between the house of one Shamrao and the complainant. The house of the applicant, as per the sketch map, is situated beyond the house of Shamrao and

thus, from the sketch map, it is clear that a tleast *prima facie*, the incident in question has not occurred in front of the house of applicant, as claimed by the prosecution witnesses. Further, though in the First Information Report, it is stated by Savitrabai that she had witnessed the incident in question under the light, P. W. 3 - Ritesh states as under:

"It is true to say that we did not find any electricity pole, therefore, it is not mentioned in spot panchanama."

11 If that be so, there some force in the submission of learned Counsel for the applicant that the evidence of Savitrabai is not only exaggerated but it is quite possible that she might not have witnessed the incident in question actually.

12 Dr. Kishan Naik (P. W.4) has proved the *post mortem* report (Exhibit-40). No doubt true, that there appears to be two stab injuries on the person of the deceased when *post mortem* was conducted. The first injury is having measurement 9 x 3 x 2 cm over maxillary area of face on the left side with fracture of left maxillary bone up to the upper jaw. According to the evidence of

Dr. Kishan Naik, the second injury was having size 3 x 2 x 2.5 cm on popliteal fossa on left side with injury to popliteal vessel. According to the doctor, the second injury is not on the vital part. However, the learned Autopsy Surgeon was absolutely right by observing that though it is not a vital part, but the main vein passes through it. However, at the same time, a candid admission given by the learned Autopsy Surgeon has to be considered while deciding the present application, inasmuch as, the learned Autopsy Surgeon deposed that It is true to say that many persons are not aware that said vessel is present in leg and they were not knowing that it is a vital part. Thus, it is crystal clear that though the knowledge can be attributed to the present applicant in respect of first injury that he is giving the blow on the vital part, that cannot be attributed to the second injury, which he has caused. Further, it is crystal clear at least, *prima facie*, that there was no intention on the part of the applicant to kill his brother. It appears that the incident has occurred in the spur of the moment and, therefore, it is quite possible that ultimately the offence may be scaled down from Section 302 of the Indian Penal Code to any other lesser offence. The applicant is not having any criminal antecedents at his record.

13 Though the applicant was not on bail during the trial, as observed by this Court in preceding paragraphs, we are of the view that the application of the applicant can be considered favourably.

14 Resultantly, we pass the following order:

(i) The judgment and order dated 23.11.2021, passed by the learned Additional Sessions Judge-2, Parbhani in Sessions Trial No. 100 of 2020, convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life, shall stand remain suspended during the pendency of appeal.

(ii) Applicant – Ramrao Kishanrao Jadhav be released on bail on he executing Personal Bond of Rs.5000/- (Rs. Five Thousand) with one solvent surety for the like amount.

(iii) The applicant is directed to attend Police Station Charthan, Tq. Jintur, District Parbhani, once in six months and mark his presence during the pendency of appeal.

(iv) The applicant is directed to remain present at the time of final hearing of the appeal.

15 Criminal Application is accordingly allowed and disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. M. DESHPANDE)
JUDGE

adb