

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1576 OF 2020

Pramod Tanaji Khandekar	..Applicant
V/s.	
The State of Maharashtra	..Respondent

Mr. Amit Sale for the Applicant.
Mr. N.B. Patil, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 7 MARCH 2022

P.C.

1. By this application, the Applicant-accused is seeking bail in Crime No. 318/2018 registered with Jath Police Station District Sangli under Section 302 of I.P.C.
2. According to the prosecution, the Applicant had assaulted the deceased Siddhu @ Aakash Sargar on account of previous enmity in front of the shop of Deepak Pandurang Koli at Kudnur Tal. Jath, District Sangli. The Applicant had assaulted the deceased by a tommy on the head resulting into the death of Aakash Sargar on the spot.

3. I have heard the learned counsel for the parties. Perused record.

4. The aforesaid crime is registered on the basis of the complaint lodged by Adnyan Dashrath Pandhare on 08.11.2018. The deceased happens to be the nephew of the informant. During the course of the investigation, the dead body was sent for postmortem examination and the postmortem report shows that the deceased had sustained the following external injuries.

i) Abrasion over middle of back over skin over lumbar spine of size 2x1 cm.

ii) old healing injury present over right great toe of size 1x1 cm.

iii) old healing injury present over right malleolus of size 2x2 cm.

iv) Lacerated wound present over left fronto parietal area of scalp of size 12 x 3 cm x upto brain matter parallel to sagittal suture with left fronto parietal bone fractured. Brain parenchyma exposed.

v) Horizontal (transeverse) laceration having regular margin present over frontal area of size 5 x 3 cm.

vi) Laceration present over left ear pinna of size 1 x 1 cm.

The postmortem report shows that the death was due to shock on account of brain (head) injury.

5. The learned counsel for the Applicant submitted that the incident had happened on the spur of the moment and without any premeditation. He, therefore, submitted that no intention to

cause death of Siddhu Sargar can be attributed to the Applicant. It is submitted that the Applicant himself surrendered before the police. In short, according to the learned counsel, this is not a case where the offence under Section 302 of IPC can prima facie be made out.

6. The learned APP has submitted that there are eyewitnesses to the incident and the circumstances do not indicate, that there was any grave and sudden provocation, which was offered by the deceased, as to justify the assault on the deceased, so as to scale down the offence, to culpable homicide not amounting to murder. It is submitted that the assault was so severe that the brain matter of the deceased had come out. He submitted that at any rate, this would be a matter at the trial.

7. I have considered the circumstances and the submissions made. Prima facie it appears that there are eyewitnesses to the incident namely Bajirao Sargar and Sahebrao Lokhande, Bhauso Gadade and Dhanaji Gadade. There is an extra judicial confession said to be made by the Applicant to one Popat Daji Patil. The statement of Popat Patil is recorded under Section 164 of Cr.P.C. before the learned Magistrate. There is recovery of blood stained tommy and blood stained clothes of the Applicant.

8. In my considered view having regard to the nature of the assault, the weapon used and the fact that it was on the head and the injury sustained by the deceased, it is not possible to accept at this stage that there was no intention to cause death. The contention about the incident having happened on the spur of moment also prima facie cannot be accepted. As rightly submitted by the learned APP, this is a matter which can be gone into at the trial. The Applicant is facing a charge for a capital offence. No case for grant of bail is made out.

9. Criminal application is accordingly rejected.

10. The trial stands expedited.

(C.V. BHADANG, J.)