

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

CRIMINAL BAIL APPLICATION NO.767 OF 2022

Mr. Sagar Chandrakant Hirve

..Applicant

Versus

State of Maharashtra

..Respondent

Mr. Sachidanand D. Tandel, for the Applicant.

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

CORAM : NITIN W. SAMBRE, J.

DATE : 12th SEPTEMBER, 2022

P.C.

1. Applicant was arrested on 18th October, 2021 in Crime No.74 of 2021 for the offence punishable under Sections 302, 363, 120B, 342, 323 r/w 34 of IPC registered with Mahad Taluka Police Station.

2. The prosecution case against the applicant is, applicant's father namely, Chandrakant hired services of deceased Dhondiram in the construction of house. During such period, Dhondiram removed money wallet of Chandrakant which fact has led to the kidnapping of Dhondiram and assault and his death. It is alleged by the prosecution that Chandrakant and his two sons have assaulted deceased after his kidnapping which has led to his death. As such, offence under Section 302 of IPC.

3. Contentions of counsel for the applicant/accused

BGP.

are, even if the eye witnesses have named the applicant of assaulting deceased Dhondiram, the fact remains that the said assault is not cause for death of Dhondiram. So as to substantiate his claim, he has relied on medical documents.

4. While countering aforesaid submissions, learned APP would invite attention of this Court to the statement of eye witnesses, namely cousins of Chandrakant who are neighbours. According to him, the eye witnesses have specifically named the applicant of committing aggravated act which led to an offence punishable under Section 302 of IPC.

5. I have appreciated the said submissions.

6. The prosecution case appears that the accused have kidnapped Dhondiram on 16th October, 2021 assaulted him and brought him to their village where they assaulted after time being which is the cause for his death.

7. It appears that the deceased Dhondiram visited Primary Health Center, Mahad on 17th October 2021, during which time, he complained about breathlessness, low SPO 2 level - 91% and high BP-190/119 with pulse rate 83 per minute. As such, he was referred for further treatment to higher center. The deceased was thereafter taken to

District Hospital, Alibaug, where he was brought in unconscious state. The history narrated in medical papers placed with the charge-sheet speaks of said person was severely alcoholic and was having withdrawal symptoms.

8. It appears that the Dhondiram died thereafter which has resulted into carrying out of postmortem. Hardly any injuries were found on the body of deceased Dhondiram but for single injury on his forearm which is in the form of contuse lacerated wound.

9. The postmortem report speaks of the death due to dehydration and starvation. The advance death certificate also mentions very same cause.

10. As such, from the available medical evidence, what can be inferred is, deceased hardly suffered any injuries as has been claimed by the eye witnesses in their statements and the cause of death of Dhondiram is due to dehydration and starvation.

11. Even if statement of eye witnesses is accepted as it is, the only inference that can be drawn is Dhondiram remained in the custody of the applicant after kidnapping for short period i.e. intervening night on 16th November, 2021. On 17th November, 2021, he was taken to Primary Health Center and thereafter referred to District Hospital,

Alibaug.

12. In this background, it cannot be inferred that the deceased Dhondiram died because of the assault made by the applicant, as such necessary ingredients of offence punishable under Section 302 of IPC are made out. Of course, *prima-facie* it can be inferred that the statement of eye witnesses would justify the case punishable under Section 363 and 120B of IPC. However, having regard to the aforesaid discussion, ingredients for offence punishable under Section 302 of IPC are not made out. That being so, the application, in my opinion, needs to be allowed.

13. The applicant is directed to be released on bail on furnishing PR bond of Rs.25,000/- with one or more sureties in the like amount.

14. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence.

15. Two consecutive absence of the applicant would entail the Court below to take out proceedings for cancellation of bail.

16. The application as such stands disposed of.

[NITIN W. SAMBRE, J.]