

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1430 OF 2020****IN****CRIMINAL APPEAL NO. 1647 OF 2019**

Swamidayal Jaikaran Varma @ Rappal @ Lambu

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Vikrant V. Phatate, Appointed Advocate for Applicant.

Mr. S. S. Hulke APP, for Respondent-State.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.****DATE : 2nd AUGUST 2022.****PC. :**

1. This is an Application for bail received through Jail.
2. Heard Mr. Phatate, learned Advocate appointed by the High Court Legal Services Committee, Mumbai to represent Applicant and learned APP for Respondent-State.
3. Applicant is convicted under Section 302 of the Indian Penal Code (for short “the IPC”) for committing culpable homicide of Krupashankar Pathak at Kalwa, District Thane, and sentenced to suffer life imprisonment by the learned Additional Sessions Judge, Thane in Sessions Case No.455 of 2016, by its Judgment and Order dated 28th February 2019.

4. Present case is based on circumstantial evidence. Prosecution has propounded three major circumstances against Applicant, namely ; (i) Motive, (ii) Recovery of weapon i.e. katauni and (iii) Extra judicial confession given by Applicant.

5. The date of finding of dead body of deceased is 27th May 2016 in the morning.

Shravan Deepchand Benbashi (P.W.3) resident of the locality has deposed that, on 26th May 2016 at about 7 p.m. he witnessed quarrel between Applicant and deceased Krupashankar Pathak. He was knowing Applicant as 'Lambu'. That, both of them were under influence of liquor. Applicant had consumed more liquor than deceased. In the said quarrel, Applicant threatened deceased that, he would kill him on that day. People present there pacified said quarrel. Thereafter he went home. On the next day at about 7 a.m. while the said witness was proceeding for his work, he heard voice of shouting of people that, Krupashankar Pathak had been murdered. Thus, prima facie prosecution has proved motive against the Applicant.

6. The weapon used in the present crime is 'katauni'. The said weapon has been seized at the instance of Applicant by effecting the panchanama under Section 27 of the Indian Evidence Act. Pramod Pathare (P.W.2) is the panch witness for the said recovery. He has proved recovery panchanama (Exh-16) under which the said iron rod/katauni has been

recovered at the instance of Applicant. The said recovery was effected on 22nd August 2016. Record indicates that, after commission of present crime Applicant was absconding and arrested on 18th August 2016 from District Gonda, State of Uttar Pradesh.

7. The third circumstance on which prosecution has relied is the extra judicial confession. Mahantesh A. Patil (PW.7) was a Civil Contractor by profession. He had availed services of Applicant on four to five occasions prior to the date of incident. He used to pay Rs. 3,500/- for 7 days as wages to the Applicant. PW.7 has deposed that, on one day Applicant came to work at about 10 a.m. at Classic Marble Company. He saw nail injuries on his neck and blood stains on his shirt. He therefore questioned Applicant about the said injuries whereupon the Applicant told him that, quarrel had happened in the late night in his area and the Applicant with a rod gave blow on the head of one person. On the same day in the evening at about 7.00 p.m. Applicant again made phone call to PW.7 and told him to send Applicant on the site of his brother in Tamil Nadu, as the person to whom he had assaulted died and police were searching for him. That, again after 1½ to 2 months Applicant again made a phone call to PW.7 and asked him to pay Rs.3,500/- to his wife. The said witness thereafter immediately contacted Kalwa Police Station and gave information about the same. The police thereafter apprehended Applicant.

8. Dr. Rajeshwar Patil (P.W.6) has performed autopsy on the dead body of Krupashankar Pathak. In his external examination he noticed nine external injuries on the face and head of the deceased including *(i) Lacerated wound present over forehead ad midline of size 8cm x 4 cm x cavity deep with underlying frontal bone fractured into pieces par t of bone missing, dura matter torn, brain matter lacerated and oozing from the wound. Obliquely placed.*

9. The aforesaid circumstances prima facie indicate that, Applicant is the sole perpetrator of the present crime. After taking into consideration the aforesaid circumstances, we are of the view that, Applicant does not deserve to be released on bail.

Application is accordingly rejected.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]