

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.325 OF 2022

1. Babusingh Piru Rathod
Aged about 48 yrs, Occ. Labour,
R/o Yermala, Dig (Heti), Tq. - Arni,
Dist. Yavatmal

....APPELLANT

// VERSUS //

1. The State of Maharashtra
through Police Station Officer,
Police Station – Arni, Tq.- Arni,
Dist. Yavatmal.
2. Shobha Haridas Jogdand
Age about: 29 yrs. Occ: Labour
R/o: Yermala (Heti) post. Bhansara
Tq. Arni Dist. Yavatmal
Dist: Yavatmal

....

...**RESPONDENTS**

Shri R.I. Mundhe, Advocate for the appellant.
Mr. M.K. Pathan, A.P.P. for respondent No.1/State.

CORAM : SUNIL B. SHUKRE AND G. A. SANAP, JJ.
DATE : 13.07.2022.

ORAL JUDGMENT: (Per: SUNIL B. SHUKRE, J.)

1. Heard Shri R.I. Mundhe, learned counsel for the
appellant and Shri M.K. Pathan, learned APP for the respondent
No.1/State. Perused the material available on record.

2. **Admit.**

3. Heard finally by consent of learned counsel for the parties.

4. Although it is submitted by learned counsel for the appellant that this is a case receiving fatal injuries by the deceased on account of his falling down on cement road after being pushed by accused No.2, who has been granted bail and as such is a case of no evidence against the appellant i.e. accused No.1, we would lean towards the argument of learned APP for the respondent No.1/State that there is sufficient material available on record which indicates *prima-facie* involvement of the appellant in the crime registered against him. The crime registered against him is that of murder, a serious crime.

5. Of course, there are some witnesses, who are supporting the defence taken by learned counsel for the appellant as stated above. But, it must be borne in mind that in spite of those persons claiming to be eye witnesses, none of them has come forward to help the deceased in any way nor had they reported the incident to the police. It was the wife of the

deceased, who had reported the incident to police and then there is also an oral dying declaration made to her by the deceased-husband when the deceased narrated to her brutal attack launched by appellant on him which later became his immediate cause of death. The injuries sustained by the deceased, at this stage, are consistent with the version of the complainant, the wife of the deceased.

6. Learned counsel for the appellant also submits that there is no possibility of the appellant tampering with the evidence and appellant is in jail for last more than seven months and when it is quite well known that the trial of the appellant is not going to be completed within a reasonable period of time, it would be in the interest of justice, that the appellant be released on bail. He relies upon the view taken by Hon'ble Supreme Court in the case of *Dinubhai Boghabhai Solanki Vs. State of Gujarat & Ors.* reported in *2014 ALL MR (Cri) 1132 (S.C.)*, wherein it was found that copies of sensitive statements were not supplied to the accused and that the accused not prone to tampering with evidence and therefore, Hon'ble Supreme Court directed enlargement of the accused on bail.

7. The facts of the present case are quite different, as can be seen from the narration of some of the important facts in the earlier paragraph. One of the important facts of the present case which distinguishes itself from the case of *Dinubhai Boghabhai Solanki* is that the appellant having brutally injured the deceased in order to pacify his grudge against the deceased. If that is the case, the possibility of tampering with the prosecution witnesses would be very much there.

8. In the result, we find no merit in the appeal. Appeal is dismissed.

9. We grant liberty to the appellant to move the trial Court for expedite conclusion of the trial.

JUDGE

JUDGE

manisha