

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

**INTERIM APPLICATION NO. 3514 OF 2022
IN
CRIMINAL APPEAL NO. 1040 OF 2022**

Ramji Kanji

..Applicant.

Versus

The Union Territory of Daman & Diu
and Dadra & Nagar Haveli & Anr.

..Respondents

Mr. Pawan Mali for applicant.

Mr. H. S. Venegavkar for Respondent No.1

Mr. S. R. Agarkar, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 12 JANUARY 2023

PC :

1. This is an application for bail pending the Appeal. The applicant was the original accused No.1 in Sessions Case No.4 of 2015 before the Sessions Judge, Diu. Learned Trial Judge vide his Judgment and order dated 30/09/2022 convicted the applicant for commission of offence punishable U/s.304 (part II) of the I.P.C. and sentenced him to suffer R.I. for 10 years and to pay a fine of Rs.50000/-. The amount of fine was directed to be paid to the widow of the deceased Babu Rama.

2. Heard Shri. Pawan Mali, learned counsel for the applicant, Shri. Venegavkar, learned counsel for the Respondent No.1 and Shri. Agarkar, learned APP for the State/Respondent No.2.

3. The prosecution case is that, on 02/05/2015 there was some fire near the house of the deceased Babu Rama Bariya. He came to know that the fire was a result of bursting of crackers when some people were celebrating a birthday in the nearby locality. Babu Rama was proceeding towards them to tell them to be careful. On the road, the applicant stopped him, abused him and gave a blow on his right hand. In the meantime, Babu Rama's wife and daughter in law came there. The applicant's son also came there. There was further quarrel. The applicant gave a blow with wooden stick on Babu Rama's head. He fell down. He was taken to Government hospital, Diu and then he was referred to Lifecare hospital, Una for better treatment. In the hospital at Una his statement was recorded on the next day and the F.I.R. was lodged at Diu police station. The applicant faced the trial along with his son for commission of offence punishable U/s.302 of I.P.C.

His son was acquitted. The applicant was convicted and sentenced, as mentioned earlier.

4. Learned counsel for the applicant submitted that the prosecution case is not clear. The genesis of the incident is not clear. There was no reason mentioned as to why this incident has started and resulted in the blow on the head of Babu Rama. He further submitted that the F.I.R. was not lodged immediately. The circumstances in which the F.I.R. is lodged are also doubtful. Learned counsel further submitted that the deceased died on 12/05/2015; that could be a result of complications during treatment, but for that the applicant was not responsible. He submitted that the applicant was on bail during trial and he has not misused that liberty.

5. Learned counsel for the Respondent No.1 submitted that, there is consistent version of the two eye witnesses i.e. wife and daughter in law of the deceased with the dying declaration of the deceased himself which was treated as an F.I.R. There is no doubt that the injury was caused by the applicant which ultimately led to

Babu's death. He, therefore, opposed this application.

6. I have considered these submissions. I have also perused the notes of evidence annexed to this application. Learned counsel for the applicant also produced a translated copy of the F.I.R. which was treated as dying declaration. Said report was produced on record by PW-11 vide Exhibit 58. This version in the F.I.R./dying declaration is supported by the evidence of the deceased's wife and daughter in law who are examined as PW-5 and PW-6. Therefore, it does appear that the applicant caused the head injury. However, there was no skull fracture. There was internal hemorrhage. The deceased survived for 10 more days. He was taken to three different hospitals. Therefore, whether it would be an offence U/s.304 (part II) of the I.P.C. or if it is a lesser offence, will have to be determined at the final hearing stage. The applicant was on bail during trial for a long period and he has not misused that liberty. The incident had taken place in May 2015. Almost 8 years have passed and in between there are no allegations of any antecedents against the applicant. Considering these factors, the applicant can be granted bail during pendency of

his appeal.

7. Hence, the following order:

O R D E R

i) During pendency and final disposal of Criminal Appeal No.1040 of 2022, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.

ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)