

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

**INTERIM APPLICATION NO.3648 OF 2024
IN
CRIMINAL APPEAL NO.84 OF 2020**

Ashok Devu KodeApplicant
Versus
The State of MaharashtraRespondent

Dr. Yug Mohit Chaudhry, Advocate for the Applicant.
Ms. M.H. Mhatre, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 24th APRIL, 2025

P.C. :

1. This is an Application for bail pending Criminal Appeal No.84/2020. The Applicant was the original accused No.1. He was convicted by the learned Extra Additional Sessions Judge, Vasai vide judgment and order dated 4.12.2019 passed in Sessions Case No.62/2016 for commission of offences punishable under Sections 302, 307, 324 read with 34 of IPC. Along with the present Applicant, his brother the

accused No.2 Bhagirath was also similarly convicted. The major sentence imposed on them was imprisonment for life besides imposition of fine.

2. Heard Dr. Yug Mohit Chaudhry, learned counsel for the Applicant and Ms. M.H. Mhatre, learned APP for the Respondent-State.

3. The Applicant and his co-accused had preferred Interim Application Nos.270/2020 and 3448/2021 in Criminal Appeal No.84/2020 for their release on bail. A Division Bench of this Court vide order dated 15.3.2022 allowed withdrawal of Interim Application No.270/2020 with liberty to file fresh application for bail if the Appeal was not decided within one year from 15.3.2022. The order was not specifically referring to Interim Application No.3448/2021, which was dismissed subsequently vide the order 5.1.2023 passed by another Division Bench.

4. After both these orders, the present Application is preferred by the Applicant pursuant to the liberty granted vide

the order dated 15.3.2022 in I.A. No.270/2020. In the meantime, the accused Bhagirath was granted bail by another Division Bench of this Court vide order dated 30.1.2024 passed in Interim Application No.1993/2023 in Criminal Appeal No.84/2020. In this background, we have entertained the present application because liberty was granted to the Applicant vide order dated 15.3.2022 and there is change in the circumstances because the co-accused was granted bail vide order dated 30.1.2024 passed in Interim Application No.1993/2023.

5. The prosecution case is that there was a dispute between the Applicant and his co-accused on one side and the deceased Prakash and his family on the other. The incident occurred on 15.1.2016. The FIR mentions that the Applicant used a heavy iron strip and the co-accused Bhagirath used a wooden log in assaulting Prakash. The FIR mentions that both these accused assaulted Prakash on his head and other parts of the body. On these allegations, the FIR was lodged.

6. Prakash was shifted to a hospital. He survived a

few more days and succumbed to his injuries on 1.2.2016. The Applicant was arrested on 26.1.2016 and since then he is in custody.

7. Learned counsel for the Applicant submitted that the FIR attributes the same role to both the accused i.e. assault on Prakash's head. The co-accused Bhagirath on similar allegations, is granted bail. Though the eye witnesses i.e. PW-3 Sharad Kode and PW-4 Dashrath Kode have deposed differently in their depositions while describing the incident; the FIR mentions the incident attributing the head injury to both the accused.

8. Learned counsel submitted that, in any case there was only one blow given to the deceased on the head. He was not assaulted repeatedly on the vital parts. The deceased had survived for about eight days and, therefore, the offence may not be the one punishable under Section 302 of IPC but could be a lesser offence. The Applicant is already in custody for about more than nine years. The Appeal is not likely to be decided in the near future. Therefore, in this background the

Applicant deserves to be released on bail.

9. Learned APP, on the other hand, submitted that the evidence of the eye witnesses i.e. Sharad Kode and Dashrath Kode is consistent and they have attributed specific role of assault on the head with iron strip to the Applicant. The question whether it is a lesser offence will have to be decided at the final hearing stage

10. We have considered these submissions and we have perused the evidence of the eye witnesses and the medical officer who had conducted the postmortem examination. The eye witnesses are PW-3 Sharad Kode who is the brother of the deceased Prakash and PW-4 Dashrath Kode who is father of the deceased. Both of them consistently stated in their depositions that the Applicant has assaulted the deceased with an iron strip on his head. The medical evidence shows that there was subdural hemorrhage over right fronto parieto temporo region. This evidence is given by Dr. Sangale. But by that time the deceased was treated in a hospital and there were some marks showing treatment given to the deceased.

11. PW-10 Dr. Sham Mahato had examined Prakash on 25.1.2016 and had noted contused lacerated wound of the size 8x3x2 cm on frontal region and there was depressed fracture on the frontal bone. Quite clearly it was the cause of death.

12. However, at this stage it can be seen that the deceased was unarmed. Both the accused had come there armed with weapons. There was one blow given on the head which was on the vital part of the body. Both the accused could have assaulted the deceased on vital parts and could have given more blows. At this stage, there is scope to believe that there was intention to cause such bodily injury. Whether the offence amounts to a lesser offence will have to be decided at the final hearing stage. The submission that it could be lesser offence will also have to be taken into consideration. The Applicant is already in custody for more than nine years. The Appeal is not likely to be decided within a reasonable period. Therefore, we are inclined to grant bail to the Applicant pending his appeal.

13. Hence, the following order:

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.84/2020, the Applicant is directed to be released on bail on his executing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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