

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

ANTICIPATORY BAIL APPLICATION NO.1723 OF 2016

Ganesh Sitaram Gawari

.... Applicant

versus

State of Maharashtra

... Respondent

Mr.Aniket Nikam, Advocate i/b. Aashhish Satpute, Advocate for
the Applicant.

Mr.Rajan Salvi, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 10th JANUARY, 2017.

P.C. :

1. This application is moved for pre-arrest bail by the applicant/accused. The applicant/accused is prosecuted for the offences under section 302 r/w 34 of IPC in C.R.No.90/16 of Vadgaon Maval Police Station. The offence is registered at the instance of Vigunath Raghuvir Pal on 07/05/2016.

2. It is the case of prosecution that on 06/05/2016 deceased Lalchand Ramdeo Pal was driving his container on the road. At that time the dispute took place between the applicant/accused, his friends and deceased, on account of taking vehicle. The applicant/accused stopped the container by putting

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his Scoda Car in front of the container and thereafter they pulled out deceased Lalchand and assaulted him with fist blows on his stomach and thereafter they ran away. The deceased contacted the complainant on cell phone through his relative, who arrived there and got the information of assault by the applicant/accused and others, from the deceased himself. The deceased was taken to Talegaon Pune General Hospital, who died on the next day i.e. on 07/05/2016 at 10.45 hours and therefore offence of murder was registered against the applicant/accused and the co-accused.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused had no intention to kill the deceased. It was an accidental death after the assault. He further submitted that the applicant/accused and the co-accused did not assault deceased with fist blows. It happened out of sudden quarrel. He submitted that the applicant/accused was very much available to the police from May 2016 till today. To that effect applicant/accused has filed affidavit. He submitted that the applicant/accused has executed the sale deeds in the office of Registrar, which is verified by the police station.

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4. The learned prosecutor while opposing the bail application submitted that the offence is of murder punishable u/s 302 of IPC and no anticipatory bail be granted in this case. He submitted that the deceased has mentioned name of the applicant/accused who hit him with the fist blows. He further submitted that police could not arrest the applicant/accused as he was absconding. Affidavit of API Ganesh Vishnupant Lokare is hereby filed and relied by the learned prosecutor. He also relied on the post-mortem report.

5. Perused the FIR and the statements of witnesses. Chargesheet is filed in the Court. The cause of death in the post-mortem report is mentioned that *“Death is due to septicemia due to perforated peritonitis due to small intestine perforation.”*

6. Thus, the injury is caused definitely due to the fist blows given by the applicant/accused and the co-accused in the stomach of the deceased. However, I take into account that no weapon was used and the incident had taken place suddenly on account of overtaking of the vehicles. As there are no criminal

antecedents against the applicant/accused, no mens rea to kill the deceased is found and therefore, considering the circumstances and the manner, in which the offence has taken place, I am inclined to grant pre-arrest bail in the following terms:

ORDER

- (i) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (ii) The applicant/accused shall cooperate with the Investigating Officer and attend the concerned police station on 16/01/2017 and 23/01/2017 between 11.00 a.m. to 02.00 p.m.
- (iii) The applicant/accused shall not tamper with the evidence or pressurize the complainant.
- (iv) The applicant/accused shall not indulge into any criminal activity.

7. The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)