

ORDER BELOW EXH. 5 IN SESSIONS CASE NO. 37/2016 :-

This is an application filed by the accused Vijay Moghe under section 439 of the Code of Criminal Procedure praying for releasing him on bail in connection with Crime No. 440/2015 registered with Kothrud Police Station, Pune under sections 302, 362, 367, 354 and 323 read with section 34 of Indian Penal Code.

2] The accused has submitted that as per prosecution story, on 30-9-2015 one Shama Bapu Deokule lodged FIR alleging that there are some illicit relations between her son Datta and Radha, the wife of one Ganesh Moghe. It is further alleged in the complaint that on 30-9-2015 at about 10.30 a.m., the complainant and her two daughters came near Vasantnagar, Kelewadi and they found Bapu Deokule sitting near the temple. At that time, Ganesh Moghe, Vijay Moghe, Shankar Moghe, Raju Moghe and Nana Moghe caught hold the complainant and her daughters and unwrapped the saree of the complainant.

3] They assaulted Bapu Deokule, the husband of the complainant and they ran away. Bapu Deokule fell on the ground and he died.

4] On lodging complaint, crime is registered against the accused and he came to be arrested on 30-9-2015.

5] The accused has specifically submitted that he has not committed any offence as alleged and he is entitled to the relief of

bail.

6] The prosecution has resisted this application vide its say Exh.6.

7] Heard advocate Smt. Tondon for the accused. Heard learned APP Smt. Raskar for the State. Perused record.

8] In view of these facts, following points arise for determination. I have recorded my findings against them for the reasons stated thereafter.

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether the accused is entitled for bail as prayed ?	No.
2] What order ?	..As per final order.

R E A S O N S

Points Nos. 1 and 2:

9] While arguing this application, it is submitted by Advocate Smt. Tondon for the accused that the contents of the complaint go to show that the deceased Bapu Deokule was assaulted by fist and kick blows and no weapon was used by the accused. Hence, it cannot be said that there was any motive or intention on the part of the accused to kill the said Bapu Deokule. It is further submitted on behalf of the accused that there is no medical evidence to show alleged beating at the hands of the accused. Presence of the accused on the spot is not proved by prosecution through any of the witnesses. Spot panchnama was conducted by police on next day and not on the same day and

there is substantive delay in recording the statements of witnesses. It is lastly submitted on behalf of the accused that the accused is a young boy, aged 25 years and he has not committed any offence as alleged and he is entitled for the relief of bail.

10] As against this, learned APP Smt. Raskar has submitted in the course of her argument that the statements of the witnesses show that the accused was present on the spot at the time of incidence. The co-accused has made disclosure statement that Hatoda/hammer was used and there is memorandum panchnama in that regard. Post mortem report also shows various injuries on the person of the deceased and there is prima facie evidence against the accused to attribute guilt in regard to the said offences and the accused is not entitled for the relief of bail.

11] On perusal of record, it appears that the complainant Shama Bapu Deokule, the wife of deceased Bapu Deokule, lodged complaint on 30-9-2015 with Kothrud police station against the present accused and four others, alleging that they in conspiracy with each other on 30-9-2015 at about 10.30 a.m. assaulted her and her daughters on the count that there are some illicit relations between her son Datta and one Radha Moghe, the wife of Ganesh Moghe.

12] It is also alleged by the complainant that the said persons unwrapped her saree and made her naked. They dragged her husband Bapu and all the four persons beat him by means of fist and kick blows and they killed him.

13] On lodging complaint, crime is registered against the accused and he came to be arrested.

14] True it is that as has been submitted by Advocate Smt. Tondon on behalf of the accused, there is no disclosure in the statement of the complainant about use of hammer by the accused persons to assault Bapu Deokule. However, the memorandum of one Shankar alias Nana Moghe discloses that the hammer was used for assaulting Bapu Deokule and the said hammer has been seized under panchnama dated 1-10-2015. This being so, the argument advanced on behalf of the accused that there was no intention on the part of the accused to kill the deceased Bapu Deokule to attract section 302 of I.P.C. does not find any place.

15] As has been submitted on behalf of the prosecution, the statements of the witnesses are there on record and there also appear some eye witnesses to the incidence, who have stated about assault at the hands of the accused and others to Bapu Deokule. The factum of assault gets supported and strengthened by the post mortem report filed on record, wherein injuries running into three pages are mentioned.

16] Thus, considering the contents of the complaint coupled with the statements of witnesses available on record and considering- the relevant documents on record, it appears that there is prima facie evidence against the accused to show his involvement in the commission of offences, which are very serious

in nature.

17] Considering these facts together and considering the nature and gravity of the offences alleged to have been committed by the accused, I am of the view that this is not a fit case to enlarge the accused on bail. Hence, I pass the following order.

ORDER

Application is rejected.

Date: 4/8/2016.

(Smt. L. L. Yenkar)
Additional Sessions Judge, Pune.

I affirm that the contents of this PDF file Judgment are same word to word as per original Judgment.

Name of Steno : S.R. Shahane,

Court Name : Smt. L.L.Yenkar

Additional Sessions Judge, Pune.

Date on which the P.O.

Signed the judgment :

Date pf PDF file:

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