

**ORDER BELOW EXH. 16 IN SESSIONS CASE NO. 37/2016 :-**

This is an application filed by the accused Ganesh Parshuram 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 the Indian Penal Code.

2] The accused has submitted that as per prosecution story, the complainant Shama Bapu Devkule lodged complaint that there was illicit relationship between the wife of the accused Ganesh Moghe and her son Datta and on that count, there was quarrel between the two families. The complainant has alleged that on 30-9-2015 at about 10.30 a.m., when she herself and her two daughters came near Shankar temple and when her husband was sitting over there, the accused Ganesh Moghe, Vijay Moghe, Raju Moghe and Nana Moghe suddenly came there and they assaulted her and her daughters. They removed her saree. Then all of them went to her husband, took him near the house of the complainant and hit him by means and fist and kick blows. The complainant has stated in her complaint that her husband Bapu Devkule became unconscious and then the accused persons ran away from the spot and they also threatened to beat the son of the complainant.

3] On lodging complaint against the accused and others,

crime was registered with Kothrud police station vide crime No. 440/15 and the accused came to be arrested on 30-9-2015.

4] The accused has specifically submitted that he has not committed any offence as alleged and he is entitled for the relief of bail.

5] The prosecution has resisted this application by filing say.

6] Heard advocate Shri Gandal for the accused. Heard learned APP Shri. Pathare for the State. Perused record.

7] 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 ?	Yes.
2] What order ?	..As per final order.

### R E A S O N S

#### Points Nos. 1 and 2:

8] While arguing this application, it is submitted by Advocate Shri. Gandal on behalf of the accused that as per prosecution story, no weapon was used by the accused in the commission of offence and head injury is therefore not possible. It is also submitted by Advocate Shri. Gandal that the accused namely Vijay Moghe has been released on bail by the Hon'ble High

Court and another accused namely Raju Moghe has been released on bail by this Court and ground of parity is applicable to the present accused.

9] It is also submitted on behalf of the accused that as per prosecution story, there was assault by fist and kick blows only and nothing is recovered at the instance of the accused and he is entitled for the relief of bail.

10] Learned APP Shri. Pathare has submitted in the course of his argument that in view of the order of the Hon'ble High Court releasing one of the accused, necessary order be passed considering the role of the present accused.

10] On perusal of record, it appears that the complainant Shama Bapu Devkule lodged complaint on 30-9-2015 with Kothrud police station alleging that on 30-9-2015, at about 10.30 a.m., the present accused, Vijay Moghe, Raju Moghe and Nana Moghe on the count that there was illicit relationship between Datta, the son of the complainant Shama and Radha, the wife of the present accused, in conspiracy with each other, assaulted her and her husband.

11] It is also alleged by the complainant that the accused persons removed her saree and they assaulted her husband Bapu Devkule by fist and kick blows. The complainant has also alleged that her son Khandu was also assaulted by kidnapping him on motorcycle.

12] On lodging complaint with the above said allegations, crime was registered with Kothrud police station against all the accused and the present accused came to be arrested on 30-9-2015.

13] Having gone through the entire contents of the complaint, it reveals that according to the complainant herself, her husband was assaulted by the present accused and three other co-accused with fist blows and kicks. It reveals from the post mortem notes that Bapu had sustained multiple injuries all over his body. The role of the accused about assault is apparently appearing. However, it is a matter of fact that no weapon was used by the accused at the time of incidence. The complainant in her complaint has nowhere stated that the accused persons assaulted her husband Bapu by means of any weapon. The story put forth by the complainant is about assault by fist blows and kicks by the present accused and three others.

14] In this context, it has also to be noted that in the medical notification of death, there is mention that the deceased Bapu Devkule died due to impact on neck and head. The post mortem report also states that the death is due to blunt injuries over neck with head injury. Thus, considering the fact that as per prosecution story, Bapu Devkule, the husband of the complainant Shama Devkule, was assaulted by the present accused and three other co-accused by means of fist blows and kicks and considering the cause of death, coupled with post mortem report on record, it

cannot be gathered that there was intention on the part of the accused to kill Bapu Devkule and there seems no prima facie evidence to attribute the guilt under section 302 of I.P.C. to the accused.

15] There does not appear criminal antecedents of the accused. In the above said facts and circumstances of the matter, no purpose will be served by detaining the accused in jail.

16] Considering these facts and considering the nature of offences alleged to have been committed by the accused, I am of the view that it will be just and proper to allow this application and to release the accused on bail, imposing some conditions. Hence , I pass the following order.

**ORDER**

Application is allowed.

Accused Ganesh Parshuram Moghe be released on bail in connection with Crime No. 440/2015 registered with Kothrud Police Station under sections 302, 362, 367, 354 and 323 read with section 34 of the Indian Penal Code, on executing P.R. bond of Rs.50,000/- (Rs. Fifty thousand only) with one or two solvent sureties for the like amount on the following conditions :

- a) Accused shall not pressurize or threaten the prosecution witnesses.
- b) The accused shall not tamper the prosecution evidence.
- c) The accused shall not jump the bail.
- d) The accused shall attend the trial regularly.

- e) The accused shall not abscond or leave India without prior permission of the Court and the accused shall furnish his permanent address to the Investigating Officer along with documentary proof.

Date: 18/9/2017.

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

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

Name of Steno. : S.R. Shahane,  
Court Name : Smt. L.L.Yenkar,  
Additional Sessions Judge, Pune.

Date on which the P.O.

Signed the order : 18/9/2017.

Date of P.D.F. : 18/9/2017.

Order uploaded on : 18/9/2017.