

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.1825 OF 2006

Radhe Shyam Mishra .. Applicant

Versus

Deepak @Luvkush Horilal Shahu

and Anr. .. Respondent

Mr.Subhash Jha for applicant

Mr.P.S.Hingorani for State

Mr.Mahesh Pahane for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 31st August 2006.

P.C.

. Applicant who is the brother of the  
deceased is aggrieved by an order below Exh.1 in

Criminal Bail Application No.500 of 2006 passed by the Additional Sessions Judge, Thane on 4th April 2006.

2. Grievance of Mr.Jha appearing in support of this application is that the learned Judge has proceeded on the basis that the first respondent accused is entitled to be enlarged on bail, firstly because there are injuries sustained during the scuffle with the deceased by him and secondly, all that is recovered is a strip cloth and two liquor bottles. Thirdly, the accused No.1 had made a confession that he and first respondent before me had committed murder of the deceased. He submits that the learned Judge's finding that there are no eye witnesses, does not permit enlarging first respondent on bail when he is accused of committing serious offence punishable with death or life imprisonment. He submits that the circumstantial evidence is enough and in appropriate cases link or chain is

established and the finger points to the accused, then, based upon this, finding of guilt can be recorded. Learned Judge has, therefore, gone into merits of the case at a stage when it is not required to be gone into such details. The learned Judge has opined on the absence of post mortem report. In such circumstances and by a cryptic order a person accused of serious offence cannot be enlarged on bail, is the complaint of Mr.Jha.

3. There would have been an opportunity to go into all these aspects but for the fact that the first respondent's Advocate Mr.Mahesh Pahane has pointed out that the trial in the sessions case has already commenced and out of 18 prosecution witnesses, about 13 witnesses have been examined till date. The I.O. is now in Box. In such circumstances, no useful purpose will be served by considering this application.

4. In my view, now going into the issues raised by Mr.Jha, would neither serve any useful purpose nor in any manner would meet the ends of justice. On the other hand, I find that expression of any opinion at this stage is bound to prejudice the case of both sides. I, therefore, refrain from expressing any opinion on merits of the case. However, while disposing of this application I clarify that the learned Sessions Judge trying the case shall not in any manner be influenced by the observations made in the order dated 4th April 2006 nor disposal of this application. All contentions of both sides are kept open.

(S.C.Dharmadhikari, J)