

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2786 OF 2007

Balwant Krishna Dalvi. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

K.S.Patil for the applicant.

S.S.Pednekar, APP for the respondent.

CORAM: V.C.DAGA, J.

DATED: 31st August 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State. Perused application and other record.

2. This application for bail under section 439 of Code of Criminal Procedure, 1973 seeking bail in connection with C.R.No.40/2006 registered with Saswad Police Station, district- Pune for the offences punishable under sections 302 and 341 of Indian Penal Code on the basis of complaint filed by one Kakoli Eshan Ghosh.

3. The prosecution case is that on 19th April, 2007, the complainant Mrs.Ghosh residing at Pune and her guests, who had come from Calcutta and Mumbai, were proceeding in her car to Balaji Mandir, Ketkawale. One Datta Shedge was driving that car. Near Hotel Avinash Garden, on the Kapoorhol Saswad Road, a white Maruti Van overtook that car of the complainant. The driver of the van abused Datta Shedge. He caught hold of the collar of Datta Shedge and tried to pull him out of car. Since it was not possible, he gave one after another strong fist blows on the face, forehead and chest of Datta Shedge while he was on steering of the car. The father of the complainant and her guests tried to intervene but the assailant did not stop. Because of severe beating, Datta Shedge fell on the steering wheel. The assailant went away. The complainant got down. Datta Shedge was removed from the driving seat. He was not able to move. Therefore, the complainant went to Balaji Mandir and called a doctor from there. The doctor inspected Datta Shedge and declared him dead. The complainant, ultimately, reported this matter to the police. On the basis of the complaint offence was registered and the applicant came to be arrested.

4. The applicant, on two occasions,

unsuccessfully, tried to seek bail from the Sessions Court by moving two separate bail applications, which came to be rejected vide orders dated 5th May, 2007 and 9th August, 2007 passed in Criminal Misc. Application Nos.1229/2007 and 2162/2007 respectively.

5. I was taken through the F.I.R. The ample material available on record clearly give vivid picture as to how in a cruel manner the alleged offence was committed by the applicant in absence of any provocation in that behalf. The deceased was innocently driving car. Even without any slightest provocation, the applicant demonstrated loss of temper. He, without allowing the deceased driver to get down from the vehicle, went on giving strong fist blows to him one after another. One can take judicial notice of the fact that when a person is on steering wheel of the vehicle, his sitting position does not allow him to move and defend himself. The deceased was placed in a similar situation. It appears that due to severe strain and one after another hard fist blows, victim's head must have banged on the steering wheel of car resulting in head injury to which victim appears to have succumbed. This is clear from the medical evidence available with the investigating

agency produced for my perusal. The applicant even did not bother, while committing alleged offence, that the person to whom he was assaulting was on the steering of the vehicle, and was not in a position to defend or protect himself.

6. In the circumstances, considering the nature of serious crime complained of, I am not inclined to grant bail in favour of the applicant. The application is, therefore, rejected for the reasons recorded herein as well as for the reasons recorded by the learned Sessions Judge in two previous orders referred to hereinabove.

JUDGE