

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

28 BAIL APPLICATION NO.1373 OF 2020

GOVINDA KRISHNA SONWANE (BHIL)
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. C C Deshpande h/f C.R.
Deshpande

APP for Respondent : Mr. A A Jagatkar

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CORAM : V.K. JADHAV, J.

Dated: December 01, 2020

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.38 of 2020 registered with Mohadi Nagar Police Station, District Dhule for the offence punishable under section 302 of the Indian Penal Code. His application with similar prayer below Exh.3/D in Sessions Case No. 81 of 2020 came to be rejected by the learned Sessions Judge, Dhule vide order dated 20.10.2020.

2. Learned counsel for the applicant submits that though the incident allegedly had taken place on 25.4.2020, the complaint came to be lodged belatedly

i.e. on 28.4.2020. Learned counsel submits that the explanation as given in the complaint about belated complaint is not satisfactory. The informant and other witnesses suspected that the deceased infected by Covid-19 and therefore delay caused in lodging the complaint. Learned counsel submits that allegedly there are eye witnesses to the incident and one witness Sanjay allegedly witnessed the incident of 25.4.2020, however, his statement also came to be recorded on 28.4.2020. Learned counsel submits that as it appears from the allegations and it has been revealed during the investigation that the applicant was suspecting that deceased had ill eye on his wife and so also the deceased had burnt the garbage from the common portion of Nalla, the applicant allegedly extended the beating to the deceased with the help of wooden log. Learned counsel submits that in fact it is not a wooden log and said weapon is a wooden stick as per the recovery panchnama drawn at the instance of the present applicant. Learned counsel submits that as per the postmortem report, the cause of death is due to "Blunt

trauma to abdomen (Homicidal)". Learned counsel submits that injured Sanjay is a got up witness. There is no criminal history. The applicant is in jail since long. The applicant is ready to abide the conditions including the condition as to not to enter in the village. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that there are eye witnesses to the incident. The applicant has extended beating to the deceased with the help of wooden log. There are in all 13 external injuries on the person of the deceased. Prima facie, there is evidence about homicidal death. Deceased had slept in front of the cattle-shed of the agricultural field where he was working and the applicant allegedly went there and caused injuries to the deceased with the help of wooden log. Even, the deceased had made oral dying declaration before the villagers gathered there on the spot in the night itself naming the present applicant as his assailant. There is

strong possibility of tampering with the prosecution evidence. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that there is delay of three days in lodging the complaint. As per the prosecution story, witness Sanjay is the eye witness to the incident. However, as stated in the complaint itself, deceased was taken to the hospital suspecting that he was suffering from Covid-19 and till his death neither the complaint was lodged against the applicant attributing specific role to him and obviously due to the delayed complaint, statement of so called eye witness Sanjay was also not recorded till 28.4.2020.

5. It appears that the applicant has allegedly used wooden stick in the assault. I have carefully gone through the postmortem report. Though, there are in all thirteen injuries on the person of the deceased, there was no external injury on his ribs. Most of the injuries are in the form of abrasions and contusions. It further

appears that there was no injury under the scalp and in terms of column nos.20, 7th to 10th ribs on the left side found to be fractured. There are allegations against the applicant that he was suspecting that the deceased had ill eye on his wife and further to burnt garbage from the common portion of the Nala. Though, witness Sanjay allegedly is an eye witness to the incident, however, said witness had kept mum till 28.4.2020. Even though there is no reference in his statement that deceased had made a oral dying declaration before him and witnesses gathered there, however, rest of the witnesses have stated about the dying declaration allegedly made by the deceased before them naming the applicant as an assailant. It further appears that though deceased was allegedly assaulted in the night, however, thereafter deceased and said so-called alleged eye witness Sanjay slept in the agricultural land itself. In the morning deceased was taken to the hospital suspecting that he was suffering from Covid-19. Thus, considering the nature of the allegations as described above, I am inclined to release the applicant on bail, however, the

applicant and witnesses are residing in the same vicinity of village Moghan, in order to avoid the tampering of the prosecution evidence, it would be just and appropriate, if the entry of the applicant is restricted in the village till the trial is concluded. Hence, following order.

O R D E R

- I. Application is hereby allowed.
- II. Applicant-GOVINDA KRISHNA SONWANE (BHIL) in connection with Crime No.38 of 2020 registered with Mohadi Nagar Police Station, District Dhule for the offence punishable under section 302 of the Indian Penal Code be released on bail on furnishing P.B. of Rs.25,000/- (Rs. Twenty Five Thousand) with one solvent surety of the like amount, on the following conditions :-
 - a] The applicant shall not tamper with the prosecution evidence, in any manner.
 - B] The applicant shall not enter within the limits of village Moghan, Tq. and District Dhule till the conclusion of the trial.

III. Bail application is accordingly disposed off.

(V.K. JADHAV, J.)

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