

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

921 BAIL APPLICATION NO.135 OF 2021

VIJAY KIRAN WARAT
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Z.H. Farooqui h/f. Gaware Niteen V.
PP for Respondents/State : Mr. D.R. Kale
...

CORAM : M.G. SEWLIKAR, J.
DATE : 26th October, 2021

PC.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail.

2. Prosecution case in short is that on 16.05.2020 at 10.00 am applicant along with Kiran Warat, Ajay Warat, Sudam Warat, Uddhav Warat went to the field of the informant. Kiran Warat assaulted the father of the informant by the name of Ashok Warat by means of a stick. Informant and his father went to there field on motorcycle. Deceased-Omkar was sleeping on a cot. All the accused persons went to that place armed with stick, wooden rod and stones and assaulted the informant, his father and Omkar who was sleeping on the cot. Applicant-Vijay and accused-Ajay assaulted Omkar on his head when he was asleep. Omkar fell unconscious there only. Thereafter, all

the accused along with applicant fled from that place. Omkar was shifted to hospital at Jamkhed. From there he was shifted to Ahmednagar in Vignaharta Hospital. From there Omkar was shifted to Sasoon Hospital, Pune. During treatment he was advised to be taken to Ahmednagar. He was brought to Ahmednagar in Civil Hospital. During treatment the deceased breathed his last. Accordingly, FIR came to be lodged on 23.05.2020. The deceased died on 23.05.2020 on the basis of the FIR offence punishable under Section 302, 143, 147, 148, 149, 323, 504, 506, 109, 114, 188 of the I.P.C. and under Section 37(1) (3)/135 of the Maharashtra Police Act came to be registered.

3. Heard Shri Farooqui learned counsel for the applicant and Shri Kale learned PP for the State.

4. Shri Farooqui submits that all the accused have been released on bail except the applicant. He further submits that it is unlikely that deceased Omkar was in such a deep sleep at 10.00 am and did not wake up despite hearing commotion. He further submits that allegations of beating are against applicant and another accused-Ajay. Ajay is a juvenile. The deceased had only one head injury. In these circumstances, it is difficult to accept that applicant delivered a fatal blow.

5. Learned PP Shri Kale submits that witnesses stated that Ajay

delivered a blow of stick on the head of the deceased. He submits that delay is properly explained.

6. From the allegations in the FIR, it appears that deceased-Omkar was sleeping on the cot at the time of the incident. From the statement of the witnesses it can be seen that accused-Kiran Warat, applicant and Ajay Warat assaulted the deceased on head. It is also seen that on the basis of complaint lodged by the applicant Crime No.217/20 came to be registered against the informant and three others for having committed offence under Section 307 of the I.P.C. This is a cross complaint. It appears that applicant also had sustained injuries. Therefore, it appears that there was a free fight between two groups and both the groups have lodged complaint against each other. Therefore, individual acts of each of the accused will have to be considered. Ajay is a juvenile. Witnesses have attributed role of assaulting Omkar on head to both Ajay and Vijay. Post mortem report shows that deceased had only one injury on the head. Only on recording of evidence it will be clear that as to who delivered the fatal blow. Considering the fact that there was a free fight between two groups and considering the individual act of each of the accused, I am inclined to release the applicant on bail. Applicant has no criminal antecedents. Applicant has an agricultural land. Therefore, he has fixed place of residence. He is not likely to flee from justice. In this view of the matter,

following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.50,000/- with one solvent surety in the like amount, in connection with Crime No.216 of 2020 under Section 302, 143, 147, 148, 149, 323, 504, 506, 109, 114, 188 of the I.P.C. and under Section 37(1)(3)/135 of the Maharashtra Police Act registered with Jamkhed Police Station, District Ahmednagar.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]