

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

**BAIL APPLICATION NO.425 OF 2021**

Riyaz s/o Abutalib Fakir,  
Age 23 years, occu. Labour,  
R/o Dalimb, Tq. Omarga,  
Dist. Osmanabad. ... Applicant.

VERSUS

The State of Maharashtra  
(Through the police station  
Murum Tq. Omarga Dist. Osmanabad) ... Respondent.

...

Advocate for the Applicant : Mr. Ganesh J. Kore  
APP for the Respondent – State : Mr. N. T. Bhagat

...

**CORAM : V. G. BISHT, J.**

**Reserved on : 12<sup>th</sup> AUGUST, 2021**  
**Pronounced on : 21<sup>st</sup> AUGUST, 2021**

**PER COURT :-**

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of bail in connection with Crime No. 177 of 2020, registered with Murum Police Station, Tq. Omarga, District Osmanabad, for the offences punishable under Sections 302, 323, 143, 147, 148, 149 and 504 of the Indian Penal Code.

2. It is the case of the prosecution that on 08.08.2020 at about 3.00 p.m. a quarrel had taken place between informant's

brother namely Pasha (since deceased), Pasha's son and his wife on the one hand and the son of accused Abutalib Mahammad Fakir namely Riyaz Abutalib Fakir on the other. This fact was told to deceased at about 5.00 p.m. on the same day. Therefore, the deceased and his son Ashpak went to the house of accused Abutalib. When this fact was told to informant by his nephew, he also rushed towards the house of said accused. When the informant reached there, he found accused Abutalib and his sons Riyaz Abutalib Fakir (applicant) and Faiyaz Abutalib Fakir. Similarly accused Zakir Munna Shaikh and Mujammil Mujub Gausuddin Mugale and son-in-law of Abutalib namely Taufiq Mahammad Mulla were also present. All of them rushed on the person of deceased and started beating him by fist and kick blows. When the informant and his nephew Ashpak tried to intervene, it is alleged, applicant Riyaz Abutalib Fakir gave a blow of wooden log on the head of deceased, as a result of which the deceased fell down and became unconscious. He also started bleeding from his head and nose. The deceased was rushed to the Hospital but succumbed to the injuries.

3. Mr. Ganesh J. Kore, learned counsel for the applicant, submits that the investigation is already completed and charge

sheet is filed. The accusation against the present applicant is that he had given the blow of wooden log which according to learned counsel was only a single blow if it is to be taken so for the sake of argument. The applicant is behind bars and no purpose would be served by keeping him in jail, and therefore, the learned counsel urged that accused be released on bail.

4. Mr. N. T. Bhagat, learned APP for the Respondent – State, on the other hand, vehemently opposed the submissions by contending that the present applicant and all other accused intentionally and in prosecution of common object of the unlawful assembly assaulted the deceased and the present applicant had given a severe blow of wooden log on the head of the deceased which resulted into the death of the deceased. The learned APP also pointed out from the Post Mortem Report that cause of death was “HEAD INJURY”. In such circumstances, the applicant has failed to make out a case for bail and the application is liable to be rejected.

5. Perused the investigation papers including statements of prosecution witnesses. It is apparent from the First Information Report that when the deceased and his son had been to the house of accused in order to ascertain from them as to why

they had quarrelled with their family members in the afternoon, the present applicant and other accused started assaulting deceased by fist and kick blows and it is at that point of time the present applicant gave a severe blow of the wooden log on the head of the deceased which ultimately contributed the head injury and also the cause of death.

6. The statement of prosecution witnesses namely Faiyaz Nasir Khan, Ashpak Pasha Patel, Digambar Appasaheb Hulge, Amirbi Pasha Patel i.e. wife of deceased and Afjalkhan Abdul Rahemankhan Pathan would clearly go to show that it was the present applicant, who had given severe blow of wooden log on the head of the deceased, as a result of which the deceased had fallen down on the ground with bleeding injuries. Post Mortem Report would show under scalp haematoma present all over skull, Skull-Vault having communitied fracture. The cause of death opined is "HEAD INJURY" (unnatural).

7. From the above, the involvement of the present applicant is *prima-facie* more than clear. Having regard to the nature and granting of offence, in my considered opinion the applicant has failed to make out a case for bail. This Court is,

therefore, not inclined to release the applicant on bail. Hence,  
the following order :-

ORDER

Application is rejected.

**( V. G. BISHT )**  
**JUDGE**

shp/-