

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

920 BAIL APPLICATION NO.433 OF 2021

BABARAO S/O.MAROTRAO HAKE
VERSUS
THE STATE OF MAHARASHTRA

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Mr.J.V.Deshpande, Advocate for the applicant.
Mr.S.B.Narwade, APP for the respondent-State.
Mr.S.S.Shaikh, Advocate for the informant.

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**CORAM: MANGESH S. PATIL, J.
DATE : 19.06.2021**

P.C.

1] One of the accused from Crime No.237 of 2020 registered with Aundha Nagnath Police Station, District Hingoli for the offences punishable under Sections 302, 307, 324, 336, 143, 144, 147, 148, 149, 323, 504, 506 of the Indian Penal Code, he is seeking bail under Section 439 of the Criminal Procedure Code after filing of the charge sheet.

2] In short, the allegations as can be appreciated from the FIR and the other police papers is to the effect that the mother of the informant had filed a case of molestation against Prakash. It is alleged that on 23.10.2020 at about 8.00 p.m. all the accused including the applicant formed unlawful assembly with an intention to assault the informant and his family members. They gathered in front of his house. The applicant is stated to have caught hold the informant and accused-Prakash having hit him with an iron rod. It is then

alleged that when the informant's father deceased Ashok tried to intervene, accused Prakash hit an iron rod on his head. The applicant is also alleged to have given a blow of stick on the head of the deceased. When the informant's mother tried to intervene even she was assaulted. Few witnesses intervened. The deceased was shifted to Government Hospital, Aundha Nagnath from where he was shifted to the Civil Hospital at Hingoli and then to a private Hospital but succumbed to the head injuries on 29.10.2020 and the FIR was lodged on that day. The offence was registered. The applicant was arrested on 02.11.2020 and is now seeking bail after filing of the charge-sheet.

3] Learned Advocate for the applicant would submit that accepting the allegations at their face value, intention to kill cannot be gathered. No deadly weapons were used. The deceased has died with only one head injury. In fact the death has not been caused due to head injury but its further complications. The allegations about inflicting head injury are attributable to at least three accused though there is only one head injury. The co-accused Praksah was at least having some motive. The applicant is not related to Prakash and is being falsely implicated. There are no criminal antecedents. He has been in jail for last 7-8 months. The trial is not likely to get over in the near future. There is least possibility of his jumping the bail. Being the bread earner of the family he may be granted bail by putting him to certain conditions.

4] Learned APP opposes the application. He submits that there are eye witnesses. One of whom has filed a complaint against co-accused Sudam for having threatened him of dire consequences if he would record a statement with the police. Though there is only one head injury and deceased has died due to some complications arising therefrom, the injury is specifically relatable to the incident. Considering the fact that several other injuries were also sustained by the deceased apart from the head injury, intention is attributable to the applicants and the other accused to kill the deceased. There is every possibility of the applicant indulging in tampering if he is released on bail. The offence is punishable upto death. There was premeditation. All the members of the assembly were armed with iron rod, sticks or bricks and therefore the application be rejected.

5] Needless to state that this is not the stage where a minute scrutiny is to be undertaken of the material collected during the course of investigation. Fact remains that, as many as three of the accused persons are being attributed with an assault on the head of the deceased. Prakash is stated to have assaulted with an iron rod. The applicant is alleged to have hit him on the head with a stick and accused Sudam is also alleged to have hit the deceased on the head with a brick. However, there is only one head injury.

6] Apart from the above state of affairs, for whatever

reason there has been about 4-5 day's delay in lodging the FIR.

7] Considering the quality of the allegations and the material coupled with the fact that there is no strong motive for the applicant to see the deceased dead and the fact that the trial is not likely to get over in the near future, the applicant deserves to be released on bail by taking precaution to obviate any manipulation.

8] The application is allowed. The applicant shall be released on bail on his executing personal recognizance for an amount of Rs.50,000/- [Rs.Fifty Thousand only] and furnishing a solvent surety in the like amount, subject to the following conditions:

- (a) He shall not tamper the evidence or influence the witnesses.
- (b) He shall attend the trial punctually.

9] Bail before the trial Court.

[MANGESH S. PATIL, J.]

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