

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

31 BAIL APPLICATION NO.694 OF 2021

**MALHARI @ BABURAO S/O. APPARAO HEGU
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr.Ghanekar Nilesh S.
APP for Respondent-State : Mr. V.M.Kagne
...

CORAM : SANDEEP K. SHINDE , J.

Date :-05th July, 2021.

P. C. :

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. It is an application for bail in connection with the crime No. 419 of 2020 registered at Akhada Balapur Police Station, District Hingoli, for the offences punishable under Sections 302, 324, 323, 427, 504 read with Section 34 of the Indian Penal Code ('IPC' for short).
3. Applicant is the brother of the complainant. There was subsisting dispute between them over an agricultural land. It is alleged that on 10th December, 2020, the applicant and his son attempted to prevent the complainant and his family members from cultivating the disputed land. Whereafter, the quarrel ensued, in the course of which the applicant dealt a blow of Iron Rod on the shoulder of the

complainant. The complainant would allege that when his son tried to intervene and pacify the quarrel, the applicant and his son fell the Omprakash (son of the complainant) on the ground and inflicted kick blows on his scrotum, whereafter, the other relatives of the complainant rushed to the spot and pacified the quarrel. On seeing the (deceased) Omprakash feeling uneasy, he was taken to the hospital and on route the applicant's son Omkar (Co-accused) also damaged the motor Car of the complainant. Omprakash succumbed to the injuries. In postmortem report the opinion as to the cause of death was 'due to terminal cardio respiratory arrest due to Blunt Trauma to Scrotum'. The incident was reported to the police and the subject crime was registered.

4. Applicant was arrested on 11th December, 2020. So also his son was also arrested. The investigation in the case is over and the charge-sheet has been filed.

5. Learned Counsel for the applicant has taken me to the statement of Revanappa Hube (Complainant), statement of Ashok Mahajan and Kamalabai (wife of Complainant). These three persons were present on the spot. It is submitted that except the complainant, other two witnesses did not say that applicant inflicted kicks on the person of deceased. Submission is that the applicant's son held assault on the deceased by inflicting kicks on his person. It is submitted that the applicant is a Senior in age. He is in the custody since more than eight

months. Also submitted that applicant's presence can be secured by imposing conditions. On this ground bail is sought.

6. Learned APP for the State, on the other hand, submitted that at this stage this Court may not discard or dis-believe the statement of the complainant. It is submitted that the offence is serious in nature and therefore, applicant may not be released on bail.

7. Prima-facie it appears that, the facts of the case may fall under exception 4 to Section 300 of the IPC. Be that as it may, I have no reason to disbelieve the statement of the mother of the deceased who was present on the spot, as well as the statement of the Ashok Mahajan. Both have not attributed role to the applicant. Prima-facie the allegations of mounting assault were made against Omkar Mahlari Hegu (Co-accused). In consideration of the facts, case is made out to release the applicant on bail on following terms :

ORDER

(i) The applicant arrested in Crime No. 419 of 2020 registered at Akhada Balapur Police Station, District Hingoli, shall be released on bail on executing PR bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with one or more sureties in the like amount.

(ii) Applicant shall report to the Investigating Officer once in a month i.e. on every 2nd Monday of each month between 11.00 to 1.00 p.m. commencing from July,

2021, till the charge is framed and co-operate in the investigation.

8. The application is accordingly allowed and disposed off.
9. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE)
JUDGE

mahajansb/