

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

925 BAIL APPLICATION NO.1042 OF 2021

Bhausahab s/o Baban Khandekar
Age: 36 years, Occu.: Agri.,
R/o.Khandala, Tq.Karjat,
Dist.Ahmednagar.

..Applicant
(Orig. accused)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Karjat Police Station,
Tq.Karjat, Dist.Ahmednagar.

..Respondent

...
Advocate for Applicant : Shri Rahul R. Karpe i/b. Shri S.K.Patil
and Shri A.S.Halnawar
APP for Respondent : Shri S.D.Ghayal

...
CORAM : M.G.SEWLIKAR, J.

DATE: 16th November, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.I-322 of 2018 registered with Karjat Police Station, Dist.Ahmednagar, under Sections 302, 120(B) of the Indian Penal Code.

2. Informant is the cousin of the deceased Rahul Goikar. There was some dispute between the family of the applicant and

deceased Rahul since 2-3 years before the incident. There was a fight between deceased Rahul Goikar, Akash Mane on one hand and applicant on the other hand on 20th November, 2018 on account of dancing. On 21st November, 2018 at 10:00 p.m., informant heard commotion from the house of the applicant. When he went to the spot, he found that applicant was assaulting deceased Rahul by means of a wooden rod. Accused Tolabi Khandekar, Rajendra Choudhari were pelting stones towards Ertiga car bearing No.MH-42 K-6478. When the deceased Rahul was proceeding ahead, applicant delivered a blow of stick on the head of the deceased Rahul. Deceased Rahul fell down. Baban Khandekar, the father of the applicant was instigating the applicant to assault the deceased. Tolabai Khandekar also assaulted the deceased by means of a stick. The deceased was assaulted even after he had died. On these allegations, FIR came to be lodged on 22nd November, 2018 at 06:05 a.m. under the aforesaid Sections.

3. Heard Shri R.R.Karpe, learned counsel for the applicant and Shri S.D.Ghayal, learned APP for the respondent-State.

4. Shri Karpe, learned counsel for the applicant submits that applicant has also filed counter complaint against the deceased

and his family members alleging therein that the deceased and his friends had assaulted the applicant and his family members. He submits that incident took place in front of house of the applicant. Quarrel was initiated by the deceased and his friends on trivial ground of lodging of a complaint by applicant against Akash Mane, the friend of the deceased. He submits that the applicant also had sustained injuries and his clothes were stained with blood. He further submits that the deceased and his friends were the aggressors. Spot Panchanama also bears testimony to this. He, therefore, prays for releasing the applicant on bail. He submits that all the other accused have been released on bail.

5. Shri S.D.Ghayal, learned APP for the respondent-State submits that whether deceased and his friends were aggressors or not will be decided during the trial. He, further submits that FIR clearly shows that the deceased was assaulted by the applicant even when deceased was leaving the spot of the incident. He submits that even after the deceased had fallen down, the applicant and other accused continued to assault him. He submits that all these events clearly go to show that the assault was with the intention of committing murder of the deceased.

6. Charge-sheet is filed. On perusal of the charge-sheet, it appears that spot of the incident is the house of the applicant. The spot panchanama shows that there were two cars : one of the deceased i.e. Ertiga and the other one of the applicant i.e. Scorpio. Both the cars were in damaged condition. The spot panchanama further shows that there was a plastic bottle lying at the spot emitting the smell of petrol. The map of the spot panchanama shows that there was a spot where grass was found to have been burnt which corroborates the use of petrol during the incident by the deceased. Statements of the witnesses including independent witnesses show that the incident took place in front of the house of the applicant. Applicant alone was the male member in the house and the deceased was accompanied by two of his friends. Considering the totality of the circumstances, it appears that the deceased party was the aggressor. Whether the applicant had exceeded his right of private defence will be considered during trial. Applicant does not have criminal antecedent. He is not likely to flee from justice. In this view of the matter, I am inclined to release the applicant on bail.

7. Learned APP for the respondent at the stage submits that the applicant should not be allowed to enter the village till conclusion of the trial.

Learned counsel for the applicant has no objection for the same.

8. In this view of the matter, following order is passed :

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.I-322 of 2018 registered with Karjat Police Station, Dist.Ahmednagar, under Sections 302, 120(B) of the Indian Penal Code, and on condition that till the conclusion of the trial, he shall not enter village Khandala, Tq.Karjat, Dist.Ahmednagar.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**