

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

BAIL APPLICATION NO.1526 OF 2020

Ramrao Kishanrao Jadhav
Age- 58 years, Occu. Agril.,
R/o Charthana, Tq. Jintur,
District- Parbhani.

...Applicant

Versus

The State of Maharashtra
Through: The Investigating Officer,
Charthana Police Station,
Tq. Jintur, Dist. Parbhani.

...Respondent

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Mr. M.P. Tripathi, Advocate for the applicant.
Mr. S.B. Narwade, APP for the respondent-State.

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CORAM : SMT. VIBHA KANKANWADI, J.

**RESERVED ON : 12th FEBRUARY, 2021
PRONOUNCED ON : 23rd FEBRUARY, 2021**

ORDER:-

1. The applicant has been arrested in connection with Crime No.49 of 2020 registered with Charthana Police Station, Taluka Jintur, District Parbhani for the offence punishable under Sections 302, 504 of the Indian Penal Code. He has filed the present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. M.P. Tripathi for the applicant and learned APP Mr. S.B. Narwade for the respondent-State.

3. It has been vehemently submitted on behalf of the

applicant that the applicant is innocent person and has been falsely implicated. Deceased is the brother of the present applicant. They reside separately adjoining to each other. It has been contended that the dispute started on account of resistance by the deceased to the act of she-goats belonging to the applicant that they were eating fodder, which was collected by deceased. In fact, the incident is stated to have taken place at about 07.30 pm and there are no street lights. It might have been the fact that somebody else would have caused injuries to the deceased but due to the strained relationship, the name of the present applicant has been taken. The prosecution story is that the assault is by axe, however, medical papers do not support it as it is mentioned in the postmortem report that it is 'stab injury'. The axe can give only cut injury or incised wounds. Further the statements of witnesses under Section 161 and 164 of the Code of Criminal Procedure would give contradictions. Another fact that is also required to be considered from the postmortem report is that, the postmortem report mentions that stomach contains 250 ml semi-digestive food, which means meals would have been taken two hours prior to the incident. However, in the FIR it is stated that after the deceased had consumed meals (fish item), was proceeding to call his mother for dinner. There was no intention to kill. At the most, for the sake of arguments the incident is taken as it is, it would disclose offence under Section 304-II of the Indian Penal Code. The

investigation is over and charge sheet is filed, therefore, the custody of the applicant is unwarranted. He is behind the bars since 20.05.2020. He is ready to abide by the terms of bail.

4. The learned APP strongly opposed the application and submitted that there is substantial evidence against applicant. The informant is the wife of deceased, who has witnessed the entire incident. She has specifically stated that there is provision for light in front of her house and in the focus of that light, she has witnessed the incident. Present applicant had assaulted the deceased by axe. The said axe has been discovered by the present applicant under Section 27 of the Indian Evidence Act. He has also discovered his clothes which had blood stains. Children of the deceased have also witnessed the incident and in fact, when the informant and her daughter had gone to resist the applicant, they were pushed that means they had good opportunity to see who is the assailant. The postmortem report shows there were in all five surface injuries. Two are 'stab injuries'. The medical officer would give his opinion as to whether those injuries are possible with axe or not, but it cannot be gone into in much details at this prima facie stage. Statements of the witnesses under Section 164 of the Code of Criminal Procedure is also clearly against the applicant. Whether the applicant had no intention to kill his brother and offence only under Section 304-II of the Indian Penal Code is transpiring, would be decided at the end of the trial. Therefore,

the applicant does not deserve any relief of discretionary nature.

5. At the outset, perusal of the charge sheet would show that further physical custody of the applicant is not required for the purpose of investigation, but at the same time we are then required to consider what is the evidence collected against the applicant. The informant-wife of the deceased is the eye witness. She has stated that there was quarrel between the deceased and the applicant at about 05.00 pm on 19.05.2020, when the deceased resisted the act of she-goats of applicant eating fodder, which was collected by the deceased. She states that it was resisted by her husband on the count that the said fodder was sold by him to somebody else. Present applicant abused the deceased. Thereafter at about 07.30 pm, the deceased had dinner and he told that he would call his mother, who resides independently across the house of the deceased. The informant and her daughter were sitting in the courtyard. She states that the applicant was sitting on a cot on cement road. He started obstructing the deceased by saying that he should not pass in front of his house. On the count of the said dispute, she says that the applicant assaulted the deceased by axe and the said blow hit the left side of the head of deceased, near ear. When informant and her daughter tried to resist the applicant, they were pushed and then he again gave a blow of axe on the left leg of deceased, who was then fallen on the ground. The contents of her FIR have the support of statement

by her daughter and son Pravin and Vikas. Further evidence against the present applicant is the discovery of axe under Section 27 of the Indian Evidence Act and also his own clothes. They have been sent for chemical analysis and the report is still awaited. Now, as regards the word used in postmortem report 'stab injury', the applicant wants to contend that the weapon would have been different and that too by some different person. Unless the explanation is given by the medical officer, we cannot have the interpretation of the same, so also in respect of the contents of the stomach. At the stage of bail, this Court cannot make any such observations which would affect the merits of the case, that too without any evidence. Same is the case in respect of the alleged improvements or differences between the statements of witnesses under Section 161 and 164 of the Code of Criminal Procedure. The eye-witnesses and the applicant reside in the neighbourhood, so also the other witnesses. The key witnesses are the near relatives of applicant. Possibility of tampering can not be ruled out under such situation. The fact remains is, that there is evidence against the present applicant and therefore, he does not deserve the discretionary relief. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI, J.)