

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

BAIL APPLICATION NO.1233 OF 2021

Avinash S/o Sudam Gaikwad

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Shri Sudarshan J. Salunke Advocate for Applicant.
Shri S.W. Munde, A.P.P. for Respondent-State.
...

CORAM: M.G. SEWLIKAR, J.

DATE : 17th NOVEMBER, 2021

ORDER :

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. 95 of 2021 registered with Police Station Kotwali, District-Parbhani, for the offence punishable under Section 302 of the Indian Penal Code.

2. Informant is the brother of the deceased. The deceased was brother-in-law of the applicant (i.e. applicant's sister's husband). First information report denotes that the informant

got the message that the deceased was admitted in the hospital on account of beating. When the informant reached the hospital, he found the deceased dead. When he inquired with mother-in-law of the deceased, she told the informant that at 10.00 p.m. she had seen the applicant and deceased fighting with each other under the influence of liquor and they were threatening each other to kill. She paid no attention to their quarrel as according to her such incidents were usual. Dead body of the deceased was found in his house lying in pool of blood. Therefore, incident was reported to the police.

3. It transpired during investigation that the deceased was assaulted by the applicant by means of an iron rod. The deceased sustained grievous injuries and before shifting to the hospital at Parbhani the deceased died. Therefore, offence under Section 302 of the Indian Penal Code came to be registered against the applicant.

4. Heard Shri Salunke, learned counsel for the applicant and Shri Munde, learned APP for the State.

5. Statement of mother-in-law of the deceased has been recorded. She has stated that she had seen the applicant and

the deceased fighting with each other at 10.00 p.m. in the house of the deceased, under the influence of liquor. According to her, this was usual quarrel between the applicant and the deceased. Therefore, she did not pay any attention to their quarrel and went to sleep after switching off the lights. In the morning she came to know that the deceased was murdered by the applicant.

6. From the statement of this witness, it is clear that both, the applicant and deceased were fighting with each other. Admittedly, deceased was the husband of the sister of the applicant. Nothing is brought on record to show that the applicant had any axe to grind against the deceased. Statement of mother-in-law clearly shows that both the applicant and deceased were liquor addict. According to mother-in-law of the deceased, quarrel was usual affair between the applicant and deceased, therefore, she did not pay any attention to their quarrel.

7. It can be said that in the heat of passion the incident took place. Charge-sheet is filed. Applicant does not have criminal antecedents. He will be available for trial. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on bail on his furnishing P.R. Bond of Rs.60,000/- (Rupees Sixty Thousand) with one solvent surety in the like amount, in connection with Crime No. 95 of 2021 registered with Police Station Kotwali, District-Parbhani, for the offence punishable under Section 302 of the Indian Penal Code.
- 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, J.]