

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.13 OF 2020**

Uday Gagan Mandal .. Applicant

vs.

The State of Maharashtra .. Respondent

Ms. Chaitrali Deshmukh, Counsel appointed through Legal Aid Panel for the Applicant.

Smt. J.S. Lohakare, APP for the State.

R.H. Khot, Police Constable No.33677, Samta Nagar Police Station is present.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 13, 2021

P.C.

Heard learned counsel for the parties.

2. The date of incident is 11.05.2015. The C.R. No.231 of 2015 is registered with Samta Nagar Police Station for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 37(1), 135 of the Bombay Police Act against the Applicant and his brother-Vikas Mandal, who are the two accused in respect of the said crime.

3. It is alleged that one Javed Shaikh had an affair with the sister of the accused. This was not liked by the accused. The deceased-Anis Sayyed was a friend of Javed Shaikh. The complaint

is filed by Naushad Sayyed who also happened to be a friend of deceased Anis. It is alleged that the accused No.1 assaulted the deceased-Anis on his head with a hammer. There is recovery of a hammer at the instance of the accused No.1. Apart from the complainant-Naushad, who is an eye witness to the incident, there are two more eye witnesses who say that the accused No.1 assaulted the deceased on his head with hammer.

4. Learned counsel for the Applicant submitted that the accused No.2 i.e. Vikas Mandal has been released on bail by the Sessions Court and therefore claim of parity. She contends that even the allegation against the accused No.2 is that he hit the deceased on his forehead with paver block.

5. Though the original accused No.2 i.e. Vikas Mandal has been released on bail, I am not inclined to grant bail to the present Applicant. Having gone through the order passed by the Sessions Court, it is seen that the paver block was found at the scene of the offence and there are as many as two spot panchanamas which led to the Sessions Court to hold that the accused No.2 is entitled to be released on bail. However, so far as the present Applicant is concerned, as many as three eye witnesses say that he has assaulted the deceased on his head with hammer. Moreover, the hammer is recovered at his instance. The Post Mortem notes indicate that death is due to head injury in the form of fractured skull.

6. The Application is therefore rejected. However, considering that the Applicant is in custody for more than six years, the trial is expedited. The trial Court is requested to conclude the trial as expeditiously as possible and preferably within a period of nine months from today.

7. I appreciate the assistance rendered by Ms. Chaitrali Deshmukh, who had appeared through Legal Aid pursuant to the order passed by this Court.

8. The Bail Application is disposed of.

(M.S.KARNIK, J.)

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signed by
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BHOGALE
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