

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.307 OF 2020

Jaykumar @ Jaya Sadashiv Patil Applicant
Versus
The State of Maharashtra Respondent

Mr. Aniket Nikam, Advocate i/b. Vivek N. Arote, for the Applicant.

Mr. S.H. Yadav, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 16th MARCH, 2021**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.100/2019 registered at Bharati Vidyapeeth police station, Pune on 22.1.2019 under Sections 307 read with 34 of the Indian Penal Code. The Applicant was arrested on 23.1.2019 and since then he is in custody.

2. Heard Shri Aniket Nikam, learned counsel for the Applicant and Shri S.H. Yadav, learned APP for the State.

3. The prosecution case is that the injured in this case (since deceased), Sandip Aaru was having some dispute with the present Applicant regarding parking the rickshaw in

a queue at Swargate Rickshaw Stand. On 21.1.2019, there was a quarrel and fight between them. The Applicant picked up a concrete block lying on the road and gave a blow on the head of Sandip Aaru. He got injured and was taken to hospital. After that, the FIR was lodged.

4. The FIR was lodged by Sandip's wife Madhavi Aaru on 22.1.2019. She has narrated about the dispute between the Applicant and her husband Sandip. On 21.1.2019, when the informant had telephonically called Sandip she could hear that there were arguments and discussions going on in loud voice. At that time Sandip had told her that he was with the Applicant and others. He told that the quarrel was about the old dispute. At 10:30 p.m., the informant again called Sandip but this time the call was received by police officers and she was told that the injured was removed to Bharati Vidyapeeth hospital. She went there and she saw that Sandip had suffered grievous injury on the head. The investigation was carried out and the Applicant was arrested.

5. Shri Nikam, learned Counsel for the Applicant submitted that taking the prosecution case, at the highest, it can be seen that the incident was not preplanned. The Applicant was not carrying any weapon. The incident occurred at the spur of moment. The Applicant has given only one blow and, therefore, there was no intention on his part to commit murder.

6. He submitted that in any case, the Applicant is in custody since 23.1.2019 and, therefore, his further custody during entire period of trial is unwarranted.

7. Shri Yadav, learned A.P.P, on instructions of Shri Kalaskar Sr.PI. of Bharti Vidyapeeth Police Station, submitted that the injury was quite serious and the victim Sandip never recovered from that injury and he ultimately died in October, 2019. However, on specific instructions Shri Yadav made statement that the Applicant is charge-sheeted only for commission of offence punishable under Section 307 of IPC and the offence punishable under Section 302 of IPC is not applied in this case.

8. I have considered these submissions and with their assistance, I have perused the charge-sheet. Besides the version in the FIR, there are other eye witnesses, who were knowing the victim as well as the Applicant. They are Saubham Pawale, Vishal Rajhansa, Rakesh Rasal and Suhas Walhekar. They have consistently stated that on 21.1.2019 at about 8:30 p.m., the victim, the Applicant and one Rajendra Salekar had sat together in a rickshaw consuming liquor. Suddenly Rajendra Salekar and Sandip started quarreling with each other and they went to other side of the road. After some time, even the Applicant joined them. The quarrel escalated and suddenly they started beating each other. The victim Sandip @ Aaru Balu beat the present Applicant but he himself fell down. In the meantime, the Applicant picked up a concrete block lying nearby and gave a blow to the victim causing bleeding injury on the head. All of them had consumed liquor. The police were called and then the injured was removed to hospital. All these statements are consistent.

9. Besides these eye witnesses, there are statements

of Dattatraya Adwade, Sanjay Pawar and Sushantkumar Jadhav. They have also described the incident in the similar fashion. However, they were not knowing either the victim or the assailants.

10. The injury certificate shows that the injured had suffered four injuries. One was abrasion over left eye brow which was a simple injury. The other three injuries were described as grievous injuries. They were bilateral raccoon eye, bilateral nasal bleed and left ear bleed. So these injuries were caused because of the blow given by the Applicant.

11. As of today, the prosecuting agency has not applied any higher section than Section 307 of IPC. The description of the incident shows that it had occurred at spur of the moment. The victim, the Applicant and their friends were initially peacefully talking with each other. They were drinking liquor. Suddenly they started quarreling. The situation escalated and they started beating each other. In the meantime, the victim fell down while he was assaulting the Applicant. Then the Applicant picked up a concrete block and

gave a blow. This shows that there was no premeditation and preparation. The Applicant picked up a cement block lying at the spot and gave blows. Therefore, though ultimately the injury proved to be endangering life, there was no premeditation on the part of the present Applicant. The Applicant is already in custody since more than two years. Therefore, in this background his further custody is not necessary for the entire duration of trial. He can be granted bail. Hence, the following order :

ORDER

- (i) In connection with C.R.No.100/2019 registered at Bharati Vidyapeeth police station, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station once every month till framing of the charge.
- (iii) The Application stands disposed of accordingly.

Pradeepkumar
P. Deshmane

Digitally signed by
Pradeepkumar P.
Deshmane
Date: 2021.03.19
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(SARANG V. KOTWAL, J.)

Deshmane (PS)