

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

CRIMINAL BAIL APPLICATION NO. 671 OF 2021

Subol Jotinder Debnath

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Akhilesh Upadhyay for Applicant.

Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 22th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 414 of 2019 registered at Bhuinj police station, on 17/12/2019, under section 302 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 25/12/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Akhilesh Upadhyay, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by police constable Mandar Shinde, attached to Bhuinj police station. He has stated that, on 17/12/2019, at about 1:30a.m. he was on patrolling duty. He was in the area of Pachvad Chowky. At that time, the present applicant came running near them. He told the police that he had a fight with one Ranjan Mujumdar and that he had assaulted him. Said Ranjan was lying injured. He told the police to go to that place where he was still lying. The applicant himself had one bleeding injury on his forehead. Then the police went to the spot where the incident had taken place. The police saw that a person in the age group of 55 to 60 years was lying dead. There was head injury to the deceased. The applicant further informed that there was some fight in respect of cooking food. The deceased hit him on the head and, therefore, the applicant removed a pipe and assaulted him and then as he was scared, he had approached the police and lodged this F.I.R.

4. Learned counsel for the applicant submitted that, there are no eye witnesses. The only evidence is about confession given

by the applicant himself which is inadmissible. He submitted that the applicant was very much available when he had pointed the deceased but the applicant was not immediately arrested.

5. Learned APP opposed this application. She relied on the postmortem notes. She contends that the applicant does not have right of private defence because the nature of injury suffered by the deceased was quite bad. She submitted that the applicant himself had gone to the police and had informed about the incident. The fact that he went to police station to inform about the incident, is admissible. It is incriminating. She submitted that there are witnesses who had stated that the applicant had narrated the incident to them.

6. I have considered these submissions. The case of the applicant is that the incident was a result of fight between the two and since the deceased caused injury to the applicant, he assaulted the deceased. I have perused the postmortem notes. The postmortem notes show that, there were two injuries on the head of the deceased. The first one was 13cm. X 4cm. over both parietal region and right side of frontal region, brain matter was oozing out

through this wound. Second one was 7cm. X 2cm. over occipital region and cause of death was 'Head Injury'. The fact that, brain matter was oozing out shows the force of the blow which was given by the applicant to the deceased. Therefore, right of private defence is not available to the present applicant, considering the nature of injury suffered by the deceased. The statements made by the applicant while he was in police custody are inadmissible. But his visit to the police station to inform about the incident is an admissible piece of evidence. The medical papers of the applicant do not show that he had suffered any grievous injury.

7. Considering the evidence against the present applicant and considering that the nature of injuries suffered by the deceased are quite serious, I am not inclined to grant bail to the applicant.

8. The application is rejected.

9. The observations made in this order shall be restricted to passing of this order in this application only. The trial court shall not be influenced by any of these observations during trial.

(SARANG V. KOTWAL, J.)