

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

CRIMINAL BAIL APPLICATION NO.763 OF 2021

Sandip Ashok Goud	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Tejas P. Hilage, Advocate for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.439/2019 registered at MIDC Bhosari police station, under Section 302 of the Indian Penal Code. The Applicant was arrested on 12.6.2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. The prosecution case is in respect of death of one Muffassir Kazi. The allegations are that the Applicant has committed his murder.

3. Heard Shri Tejas Hilage, learned Counsel for the Applicant and Shri Ajay Patil, learned APP for the State.

4. The FIR is lodged by Sachin Bhosale. He was friend of the deceased. He has stated that two days before the incident there was another incident in which the informant, the deceased Muffassir and their friend had beaten the present Applicant because he was under influence of liquor and he had abused them. On 11.6.2019, at about 10:00 p.m., they were travelling on their two wheeler. The Applicant intercepted them and started abusing. He picked up a stone and pelted it at Mufassir causing bleeding injuries on his head. He threw another stone at Bhola and the Applicant ran away. After that, Muffassir was dropped at his house by the informant. On the next day, the informant was told that Muffassir was taken to hospital on the next day, but, he was declared dead. On these allegations, the FIR was lodged.

5. Learned Counsel for the Applicant submitted that the postmortem notes do not support the case of the first informant. The postmortem notes show that there are injuries

on the back, which is not explained in the narration in the FIR. He submitted that the eye witness Dinesh had gone for medical examination after the Applicant was arrested and he had only suffered blunt trauma over left cheek. He further submitted that from the narration of the FIR and statement of the eye witnesses, it is clear that there was no premeditation. The Applicant had not carried any weapon and there was no intention to commit murder. Therefore, it can be a much lesser offence than the offence of murder. He, therefore, submitted that since the Applicant is in custody from 12.6.2019, his case for bail be considered in his favour.

6. Learned A.P.P. opposed this application. He submitted that there is statement of another eye witness supporting the narration in the FIR. It is without doubt revealed in the investigation that the Applicant has caused the injury and, therefore, bail should not be granted.

7. I have considered all these submissions. With their assistance, I have perused the charge-sheet. Besides the FIR, there is statement of another eye witness, namely, Dinesh

Mandothiya. He has stated about the incident in the same manner as is described in the FIR. He himself had suffered injury over his left cheek because of the stone thrown by the Applicant.

8. The postmortem notes show that the deceased had suffered five injuries. Some injuries were on the back, but, the vital injury was caused on the forehead which is directly attributed to the stone thrown by the present Applicant. Therefore, at this stage, occurrence of the incident cannot be doubted.

9. Besides this statement, there are statements of the family members of the deceased i.e. father and brother of the deceased. Both of them have stated that at about 11:00 p.m. on 11.6.2019 the deceased came home. He had bleeding injury on his forehead. He had told the family members that the Applicant had thrown a stone at him and, therefore, he had suffered a small injury on his forehead. On the next day, the deceased did not wake up from his sleep. He did not wake up till afternoon. Therefore, he was removed to

hospital, where he was declared dead.

10. Considering these submissions, the case appears to be that the Applicant was angry with the deceased and his friend because he was beaten two days prior to the main incident. However, he has not carried any weapon and he was not sure that the deceased and his friend were to pass from that place. Suddenly when he saw them, he stopped them and picked up a stone and threw it at the deceased. He also threw a stone at another eye witness.

11. From the narration, it is obvious that there was no preparation or premeditation on the part of the Applicant to cause murder of the deceased. Only one injury was caused. The deceased himself did not take that injury seriously. He went home and told his family members that he had suffered a small injury but on the next day he became unconscious and died. Thus, from the circumstances it appears that it could be a much lesser offence than the one defined as murder under IPC.

12. In this view of the matter, since the Applicant is in custody since 12.6.2019, his further custody during the entire period of trial is not necessary. He can be granted bail. Hence, the following order :

ORDER

- (i) In connection with C.R.No.439/2019 registered at MIDC Bhosari police station, 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 Application stands disposed of accordingly.

Pradeepkumar
P. Deshmane

Digitally signed by
Pradeepkumar P.
Deshmane
Date: 2021.03.20
14:30:05 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)