

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

CRIMINAL BAIL APPLICATION NO. 976 OF 2021

Amarnath Chhangur Vishwakarma ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. R. D. Suryawanshi, for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

Mr. R. Shaikh, A.S.I., Badlapur Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 24th MARCH, 2021

PC :

1. The applicant is arrested on 15th February 2020 in connection with C.R.No.I-23/2020 registered with Badlapur Police Station, Dist. Thane for offence punishable under Section 302 of Indian Penal Code.

2. The case of the prosecution is that the husband of the complainant was not doing any work and hence, the applicant had set up battery/inverter shop near Badlapur Railway Station for the husband of the complainant. The shop was conducted by the complainant's husband. However, he used to hardly visit shop. He was in habit of drinking liquor. He was not giving attention in

business. The applicant had advised the complainant's husband to mend his ways. On 13th February 2020, the applicant gave call to deceased. Thereafter the complainant's husband (deceased) left the house to meet the applicant. Thereafter, the complainant received another call from applicant. He told complainant to visit his house immediately as there was quarrel between the applicant and her husband. Hence, the complainant visited the house of the applicant. She found that the applicant was lying bleeding and her husband was also lying in bleeding condition. The applicant was taken to the hospital. The applicant was also treated in the hospital. The complainant's husband died on the same day.

3. Learned Counsel for the applicant pointed out statements of witnesses and contended that on the issue of settlement of account. There was quarrel and at the spur of moment incident of assault had occurred. There was no intention to kill. Even the applicant had sustained injuries. The deceased had allegedly assaulted applicant with the help of screw driver. The hammer and screw driver were found at the place of the incident. The injury certificate of the applicant would indicate that he had sustained injury.

4. Learned APP submitted that the applicant has used hammer in

assaulting deceased. The post mortem report shows that there are multiple injuries on the person of the deceased. It can not be said that there was no intention to kill the deceased.

5. On perusal of the documents on record, it is apparent that the deceased was not attending his business which was set up by the applicant. He was addicted to liquor. The applicant was trying to advise him to mend his ways. On the day of incident, apparently there was a quarrel between both. The applicant was admitted in hospital and he had sustained injury. The deceased had died on account of injuries sustained by him. Prima facie, it is debatable whether under Section 302 would be attracted in this case. There are extra judicial confessions purportedly made by the applicant to the witnesses who are wife, father-in-law and mother-in-law which also indicate that the incident had occurred at spur of moment and there was no intention to commit murder. The applicant is in custody for a substantial period of time. The applicant need not be detained further in custody. Bail can be granted to the applicant.

6. Hence, I pass following order.

ORDER

- (i) Criminal Bail Application No.976 of 2021 is allowed.

- (ii) The applicant is directed to be released on bail in C.R.No.I-23/2020 registered with Badlapur Police Station, Dist. Thane, on executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned police station once in three months on every first Saturday between 11.00 am. to 01.00 pm. till further order;
- (iv) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks;
- (v) Criminal Bail Application No.976 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)