

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

CRIMINAL BAIL APPLICATION NO.1042 OF 2021

Sitaram Shankar Gaikwad Applicant

versus

State of Maharashtra Respondent

.....

- Mr.Raju Maruti Yamgar, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.355/2020 registered with Yawat Police Station, Pune, under sections 302, 506 of the Indian Penal Code. The Applicant was arrested on 09/04/2020 and since then he is in custody. Investigation is over and the charge-sheet is filed.

2. The prosecution case is reflected in the FIR itself. The FIR is lodged by one Ramaka Gaikwad. She is widow of the deceased Satish Gaikwad. She has stated that the deceased's

family and Applicant's family were residing in the vicinity where their houses were on opposite side of each other. On 08/04/2020 at about 07.00 p.m. the informant's son Manik and Applicant's son Deepak were playing. After some time, they started quarreling with each other. Therefore deceased Satish shouted at them. At that time, the Applicant came there with a wooden stick and questioned the deceased as to why he had shouted at the Applicant's son. The Applicant said that he would finish him and then gave a blow of wooden stick on his back. Thereafter he pushed him with force on the ota of Mushya Gaikwad's house. It is mentioned in the FIR that he did it with the intention of commission of murder. In the process Satish suffered injury on his head. He became unconscious. He was taken to hospital, but he was declared dead before treatment. On these allegations, the FIR is lodged.

3. Heard Mr.Raju Maruti Yamgar, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.

4. Learned counsel for the Applicant submitted that on mere reading of the FIR it shows that it is not a case of murder. There was no premeditation. There was no preparation. There was no intention and there was no knowledge that the deceased would die because of this incident. He submitted that Applicant is in custody since April 2020. Investigation is over and the charge-sheet is filed. Therefore bail should be granted to him.
5. Learned APP submitted that though it may not amount to the offence of murder, it still can be termed as culpable homicide amounting to murder. The court should consider this possibility.
6. I have considered these submissions. I have perused the charge-sheet. In the charge-sheet, post-mortem notes show that there was no surface injuries on the dead body. Body of the deceased was described as thin and cold. That means deceased was not well built. The cause of death was 'death due to head injury'.

7. There is no other eyewitness to this incident except the first informant. The version of the first informant is already narrated in the FIR. The case of the prosecution certainly does not show that it was a case of murder as defined u/s 300 of IPC. It is doubtful as to whether even offence of culpable homicide of murder or even causing grievous hurt intentionally is made out. It does not appear from the incident that the Applicant intended to cause any grievous injury. Though FIR does include words like 'intention' to commit murder and utterance of words that 'he would finish the deceased'; from the narrations, the only role attributed to the present Applicant is a blow of stick on the back and pushing the deceased with force. Significantly, no mark of injury is seen on the back. That part of the FIR is not really supported by the medical evidence. But even after ignoring this discrepancy, the act of pushing the deceased with force may not show intention or knowledge of the Applicant to either commit murder or cause grievous injury. In this view of the matter, since the Applicant is already in custody since April 2020, the Applicant deserves to be released on bail.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No.355/2020 registered with Yawat 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)