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

BAIL APPLICATION NO 2517 OF 2021

Sukat Mohadan Chouhan ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Aniket Nikam i/b. Mr.Vivek Arote for the Applicant.
Mrs. PP Shinde, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.
RESERVED ON : 22ND NOVEMBER, 2021
PRONOUNCED ON : 29TH NOVEMBER, , 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.336 of 2020 registered with Satpur Police Station, Nashik for offences punishable under Sections 302 and 326 read with 34 of the Indian Penal Code (the IPC).

2. It is the case of prosecution that on 14th November, 2020 at about 11.00 pm., informant's brother, namely, Amardeep,

at the relevant time was residing in the house of one Shrikant Yadav, came and told that a quarrel had taken place between him and Vishal Shrikant Yadav over bursting of crackers and asked her to accompany him to the house of Shrikant Yadav. Accordingly, informant, her husband Samaldev Yadav (since deceased) and children went to the house of Shrikant Yadav. The mother of said Vishal came and requested them to go back to the house and that she would enquire with her son in the morning. Meantime, Vishal came and then again a verbal duel started between Amardeep and Vishal. While the exchange of words were going on, the neighbour of Shrikant, namely, Sukat Chouhan (applicant), his son Sandip Chouhan and Sanjay Chouhan also came. Sandeep Chouhan asked Amardeep to stop the quarrel and better discuss in the morning. To this, Amardeep replied that the quarrel is settled and who is he to intervene in the matter. Because of this, Sandeep got annoyed, went inside the house and brought a bat. At that time, Amardeep was standing behind deceased. When the said Sandeep tried to caught hold of Amardeep, the

deceased came before them. The prosecution alleges that the applicant caught hold of deceased from behind while Sandeep and Sanjay started assaulting on the head of the deceased by means of a bat. Later on, deceased was shifted to the hospital. However, deceased succumbed to the injuries during the course of treatment.

3. Mr. Nikam, learned Counsel for the applicant, submits that the alleged role attributed to the applicant will not attract the provisions of Sections 302 of the IPC inasmuch as the blows were given on the head by other co-accused. Further, the alleged incident took place at a spur of moment and therefore, in the facts and circumstances of the case, Section 302 of the IPC will not be applicable. Investigation is over. There are no criminal antecedents and therefore, the applicant deserves to be released on bail.

4. Mrs.Shinde, learned APP, on the other hand, submits that the facts and circumstances would show that the

applicant along with other co-accused shared a common intention. While the applicant had caught hold of deceased, other co-accused, namely, Sanjay and Sandeep assaulted deceased by means of a bat. Learned APP also invited my attention to the statements of prosecution witnesses, namely, Ramakant Laxmi Yadav, Shrikant Laxmi Yadav and Amarjit Vishwanath Yadav in support of his submission. Thus, having regard to the nature of offence, applicant is not entitled to be enlarged on bail, argued learned APP.

5. Perused the statements of witnesses and the postmortem report. From FIR itself it is more than clear that the incident in question took place all of a sudden. The FIR shows that when verbal duel was going on between Amardeep and Vishal, other accused appeared and asked Amardeep to stop the quarrel. It is only when Amardeep told them that it is none of their business to intervene, Sandeep and other got annoyed and thereafter, the incident in question ensued.

6. Apparently, the incident in question took place at spur of moment. It was not preplanned or premeditated act. I have also gone through the statements of witnesses relied by learned APP. They all support the prosecution case.

7. The findings of the postmortem report shows that there was only one injury which blackish contusion of size 8cm X 6cm was present over left parietal region of scalp. The cause of death was cranio-cerebral damage due to blunt trauma to head which is sufficient to cause death in ordinary course of nature. This apparently also shows that the applicant had no intention to cause death.

8. In view of above and the fact that the investigation is completed, the trial may take its own time. The applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Sukat Mohadan Chouhan shall be released on bail in C.R. No. 336 of 2020 registered

with Satpur Police Station, Nashik on his executing P.R. Bond in the sum of Rs. 20,000/- with one or two local surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the concerned police station as and when required.

(iv) The applicant shall not indulge in similar kind of activities.

(v) Bail before the trial Court.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)