

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

CRIMINAL BAIL APPLICATION NO. 1029 OF 2020

Manoj Vansha Gunguniya

.... Applicant

Versus
Union Territory of Dadra
and Nagar Haveli

.... Respondent

Mr. Shriram Kulkarni with Deepali Kamble for the
applicant.

Mr. H.S. Venegaokar, Spl.P.P. for the Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 18th FEBRUARY 2021**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.70 of 2020 registered with Silvassa Police Station, on 22/4/2020, under section 302 of the Indian Penal Code.

2. The prosecution case is regarding murder of one Suman who was elder brother of the present applicant. The FIR is lodged by the second wife Surekha

of deceased Suman. She was an eye witness. She has stated in her FIR dated 22/4/2020 that Suman was residing with the first informant and his son from earlier marriage. Suman's mother and sister were residing in the adjoining house. The applicant was residing at Dattupada, in his inlaw's house. Suman's daughter Dipika, from his first marriage, was having a love affair from a boy from the village. The applicant and his sister Vasanti used to support them and the deceased did not like it. One week prior to the incident, Vasanti had gone to stay with her elder sister Bharati and she was brought back by the applicant on that day in the morning at about 7 O'clock. When Suman saw this, he got angry and questioned the applicant as to why he had brought back Vasanti without asking him. There was a quarrel between them. Suman was also angry because even their mother knew about Dipika's love affair and yet Suman was not informed even by her. The quarrel escalated and the applicant picked up a big hammer lying in the varandha and gave one blow on the stomach and second

blow on the back side of Suman's head. Suman fell down, then others intervened and thereafter this FIR was lodged. Suman had succumbed to his injuries.

3. The applicant was immediately arrested on the very same day i.e. on 22.04.2020 and since then he is in custody. The investigation is over and charge-sheet is already filed.

4. Heard Mr Shriram Kulkarni, learned Counsel for the applicant and Mr. H.S. Venegaokar, Learned Special Public Prosecutor for the Respondent.

5. Learned Counsel for the applicant submitted that though there are eye witnesses to the incident, the incident itself shows that there was no premeditation and the incident had occurred on the spur of moment. He submitted that the applicant was not even carrying any weapon. He had brought his sister to his elder brother Suman's house. Suman had got angry and had started

quarrel. Thereafter this incident has taken place. He therefore, submitted that it could be a lesser offence and not the one punishable under section 302 of the Indian Penal Code.

6. Learned Special Public Prosecutor submitted that there are eye witnesses to the incident and a heavy blow was given on a vital part. Therefore, at this stage, leniency cannot be shown to the present applicant. He submitted that the trial is ready for hearing and it can commence soon.

7. Learned Counsel for the applicant stated that the next date fixed for the trial is in the month of April 2021 and therefore there is no immediate prospect of the trial commencing.

8. I have considered these submissions and with the assistance of both learned Counsel, perused the charge-sheet. Apart from the statement of first

informant, statement of another eye witness Vasanti is important. She is the sister of the deceased and the applicant. She has given brief history of the relations. She has stated that the deceased was angry with Vasanti, it was his grievance that she used to talk too much on her phone. She had gone to reside with her sister Bharati's house. Then on the date of the incident the applicant brought her back at Dattupada i.e. the village where Suman was residing. When the applicant and Vasanti came to his house, Suman got angry and questioned Manoj as to why he had brought Vasanti to his house without asking his permission. The applicant on the other hand scolded Suman for quarreling with Vasanti and their mother all the time. Quarrel ensued and both of them started beating each other. In the meantime, the deceased came near Vasanti and started beating her as well. Because of this, the applicant became angry, he picked up a hammer lying in the varandha and gave strokes on the chest and head. Suman fell down on the ground.

9. This statement shows the manner in which the incident had occurred. There is no dispute that it had occurred on the spur of moment. It was not premeditated. The applicant had not gone to the house of the deceased with intention to kill him. He had not brought any weapon. It is only after the applicant was beaten by the deceased, he picked up a hammer and gave two blows. One was on the head causing the fatal injury. Post mortem notes shows that there were six injuries on the head, that means, that blow was given forcefully. However, looking at the background of the incident and the circumstances in which the applicant had picked up hammer lying nearby and had given a blow on the head of the deceased, there is some force in the submission of Shri Kulkarni, learned Counsel for the applicant that it can be a lesser offence than the one punishable under section 302 of the I.P.C. The applicant does not have criminal antecedents. The trial is not even commencing till April 2021. Therefore I am inclined to

grant relief of bail in favour of the applicant.

10. The observations made in this order are made only for the purpose of deciding this bail application and the trial Court shall not be influenced by any of these observations while deciding the trial.

11. Hence the following order.

ORDER

- (i) In connection with C.R. No.70 of 2020 registered with Silvassa 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.

(SARANG V. KOTWAL, J.)