

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2844 OF 2021

ARUN WALUBA KURHADE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Vaibhav Kadam, Advocate for the Applicant.

Ms.PN.Dabholkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 16th NOVEMBER 2021
PRONOUNCED ON : 23rd NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.I-84 of 2021 registered with Police Station Yeola, Yeola Taluka, for offences punishable under Section 341 and 302 of the Indian Penal Code (IPC).

AVK

1/5

2 It is the case of prosecution that on 20th February 2021, at about 10.30 a.m., the informant came to know from the people that the applicant had beaten his brother, namely, Sanjay Ramchandra Shinde (since deceased) by means of fist and kick blows on the ground that the deceased had not returned the borrowed amount which he had taken a year ago from him. This incident was witnessed by the neighbouring shop owners and others. The informant, accordingly, lodged the report.

3 Mr.Vaibhav Kadam, learned counsel for the applicant, submits that the evidence on record is in the form of hearsay. The investigation is over. Charge-sheet is filed. There are no criminal antecedents and therefore, the applicant deserves to be enlarged on bail.

4 Ms.Dabholkar, learned APP, on the other hand, opposed the submissions by contending that there are eye witness to the incident and then invited my attention to the

statement of various eye witnesses. According to the learned APP, there being direct involvement of the applicant in the offence, the application does not deserve consideration.

5 Perused the investigation papers. I have also gone through the statement of witnesses namely Ahmed Tajmahal Shaikh, Balu Gangadhar Kumbhar, Ambadas Bhikaji Dhage and Faruq Rafique Shaikh. All these witnesses had seen the applicant assaulting the deceased by means of fist and kick blows. In such circumstances, it is wrong on the part of the learned counsel for the applicant to say that there is no direct evidence showing complicity of the applicant in the offence.

6 I have also gone through the postmortem report. It shows the cause of death as Intracranial haemorrhage. Here it may be noted from record that the deceased was addicted to liquor. There may be number of factors for causing intracranial haemorrhage. Although the column no.17 of the postmortem notes shows contused lacerated wounds on the person of the

deceased but the final opinion does not reflect that the injury found on the person of the deceased had triggered or might have triggered intracranial haemorrhage. Thus, at this stage, particularly when there are allegations of only fist and kick blows having been used to assault the deceased, in my considered opinion, the benefit should go in the favour of the applicant, more so, when the investigation is over and no criminal antecedents are forthcoming. Trial may take its own time and therefore, in the facts and circumstances of the case, it is not desirable to keep the applicant behind the bars.

7 For the aforesaid reasons, I pass the following order :

ORDER

- (i) Applicant – Arun Waluba Kurhade shall be released on bail in Crime No.I-84 of 2021 registered with Police Station Yeola, Yeola Taluka, on his executing P.R.Bond in the sum of Rs.20,000/- with one or two 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 called by the Investigating Officer.
- (iv) Bail before trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vi) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)