

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3257 OF 2021

AAKASH ASHOK OHVAL

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Satyavrat Joshi i/b. Mr.Sunil Kamble, Advocate for the Applicant.

Mr.P.N.Dabholkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th NOVEMBER 2021
PRONOUNCED ON : 10th DECEMBER 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.326 of 2016 registered with Police Station Bundgarden, Pune, for offences punishable under Section 302, 364, 201 read with 34 of the Indian Penal Code (IPC).

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2 The prosecution case in nutshell is that deceased Gautam @ Ram was the brother of informant. The deceased was having love affair with the sister of present applicant and had decided to marry her. However, the applicant was opposed to the said marriage.

3 On 6th December 2016, at about 3.00 p.m., applicant and co-accused Sunny Gaikwad had been to the house of the deceased and asked him to accompany them as they wanted to have a word in respect of love affair with the applicant's sister. The applicant and other accused along with deceased and Vijay Pawar went on motorcycle. They purchased liquor from the wine shop and proceeded towards Burning Ghat, Koregaon Park, Pune. As the petrol in the motorcycle had exhausted, Vijay Pawar returned, while applicant, co-accused and deceased went towards Burning ghat. The deceased did not return. While the informant and his relatives were taking search, they received message from Bundgarden Police Station about a dead body lying in Burning ghat. The informant went to the spot and identified the dead

body to be that of his brother Gautam. He, thereafter, lodged report against the applicant and others.

4 Mr.Satyavrat Joshi, learned counsel for the applicant, submits that as per the statement of eye witness Atul Ramesh Gaikwad, the applicant had given only a blow of stone on the head of deceased and nothing else was done thereafter. The learned counsel also criticized the statement of the said witness on the ground that although the incident took place on 6th December 2016, the statement came to be recorded only on 12th December 2016. No reason for delay is given. Similar is the statement of Digambar Babruwan Kamble which is also recorded on 12th December 2016 without any explanation as to the delay. According to the learned counsel the applicant is in custody since 2016 and the trial is yet to commence. There are no criminal antecedents. In such circumstances, the applicant deserves to be enlarged on bail.

5 Ms.Dabholkar, learned APP, on the other hand, vehemently opposed the submissions and invited my attention to the statement of eye witnesses, namely, Atul Ramesh Gaikwad and Digambar Babruwan Kamble. The learned APP also pointed out various injuries sustained by the deceased from the postmortem report. Having regard to the seriousness of the offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

6 Perused the investigation papers. From the postmortem report it is seen that the cause of death was death due to head injury. Although the learned counsel claims that there was only a single assault on person of the deceased at the hands of applicant, however, Column No.17 of the postmortem report shows that there were as many as 19 external injuries and 4 internal injuries on the vital part of the body i.e. head. It would appear that the cause of death was due to head injury.

7 Coming to the statement of eye witnesses, namely Atul Ramesh Gaikwad and Digambar Babruwan Kamble, it does appear that the statement was recorded on 12th December 2016 i.e. on 7th day of the incident. The statement of both these witnesses shows that when this witness pleaded with the applicant and other co-accused Anil Reddy not to beat the deceased, they threatened them with dire consequences and also told that if the incident was revealed to anybody, they would kill them also. At this stage, I am not prepared to go into the aspect of belated recording of statement of witnesses. That can be looked into by the trial Court. The fact remains that these two eye witnesses had seen the applicant and co-accused assaulting the deceased by means of stones. The injuries found on the person of the deceased and as noted from the postmortem report are self explanatory and show the brutality.

8 For the aforesaid reasons, I am not inclined to allow the application. Hence, the following order :

ORDER

- (i) The application is rejected.
- (ii) The learned trial Court is directed to expedite the trial.

(V. G. BISHT, J.)