

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

930 BAIL APPLICATION NO.6 OF 2022

Sandip @ Gujjar s/o Dharasing Mulekar
Age: 28 years, Occu.: Labour,
R/o. Near Daivbharti Hospital,
Paithan Road, Kanchanwadi,
Aurangabad.

..Applicant

VERSUS

The State of Maharashtra
(At the instance of Satara
Police Station)

..Respondent

...
Advocate for Applicant : Shri Abhaysinh K. Bhosle
APP for Respondent : Smt.R.P.Gaur

...
CORAM : M.G.SEWLIKAR, J.

DATE: 23rd February, 2022

PER COURT :-

1. This is the application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0439 of 2021, registered with Satara Police Station, District Aurangabad, under Sections 302, 307 read with Section 34 of the Indian Penal Code.

2. Case of the prosecution in brief is that the informant is the father of deceased Mahesh. Applicant, accused Vikas Rahatkar, deceased Mahesh and injured Rahul Bedake were friends. On

12th September, 2021 at 03:00 p.m., deceased Mahesh and Rahul Bedake had been to wine shop at Kanchanwadi. They purchased liquor from that wine shop and went to a building under construction for drinking liquor. They found that friend of deceased Mahesh by the name of Vikas Rahatkar i.e. accused was already drinking liquor there. Both deceased Mahesh and injured Rahul joined him. A little while later, applicant also joined these people. When liquor was finished, accused Vikas was demanding money from deceased Mahesh for more liquor. Deceased Mahesh refused to give money to accused Vikas. Thereupon, accused Vikas banged head of deceased Mahesh on the wall. Applicant picked up a brick and hit it on the head of deceased Mahesh. When injured Rahul intervened, he was also assaulted by accused Vikas and the applicant. Applicant hit injured Rahul on head. Injured Rahul fell unconscious there. When he regained consciousness, he found deceased Mahesh in a pool of blood. He, therefore, left that place. On the way, he met some people to whom he did not say anything about the injuries despite being asked. He was sitting at Hotel Tarang. Father of the deceased came there and he told father of the deceased about the entire incident.

3. Heard Shri A.K.Bhosle, learned counsel for the applicant

and Smt.R.P.Gaur, learned APP for the respondent-State.

4. Shri Bhosle, learned counsel for the applicant submits that the applicant was not present at the spot of the incident. He submits that in the CCTV footage, presence of accused Vikas, deceased Mahesh and injured Rahul is being seen. However, presence of the applicant is not being seen. He submits that conduct of injured Rahul is not free from doubt. He submits that Rahul was returning from the spot of the incident. On seeing his condition, he was asked by the witnesses about injuries but he refused to tell them as he was feeling giddiness. He submits that Tarang Hotel's owner also asked injured Rahul but he did not tell him anything. When the informant came to Tarang Hotel, he for the first time disclosed the incident to him. He submits that infact applicant is innocent but the real culprit is injured Rahul himself. He submits that accused Vikas has given extra-judicial confession that he had killed Mahesh.

5. Smt.Gaur, learned APP for the respondent-State submits that at the construction site there are four ways to approach the spot of the incident. By which way, applicant came to the spot of the incident cannot be ascertained. She submits that CCTV footage does not cover the other areas than the spot where

accused Vikas, injured Rahul and deceased Mahesh were found. She further submits that the deceased had 16 injuries. She submits that all of them were under influence of liquor. The offence was committed with full knowledge of the consequences. She submits that there is extra-judicial confession indicating that applicant and accused Vikas killed the deceased and injured Rahul. She submits that Rahul's statement under Section 161 of the Code of Criminal Procedure is consistent with the FIR. Therefore, the applicant does not deserve to be released on bail.

6. CCTV footage shows that from 04:54 p.m. to 08:35 p.m., deceased Mahesh, injured Rahul and accused Vikas were together. At no point of time does it show the presence of the applicant at that spot. Nothing is brought on record to show that there are other ways to approach the spot of the incident. Only during trial it will be clear that whether there are other ways to approach the spot of the incident. Witness Avinash Lavange has stated that accused Vikas has given extra-judicial confession that he had killed two people. Same is the statement of witness Sagar Tak. Nothing is brought on record to show that applicant was present at the spot of the incident. Injured witness has stated that he was assaulted by the applicant. However, CCTV

footage does not mention his presence. Only during trial, it will be clear whether applicant was present at the spot of the incident. Applicant has no criminal antecedents. There is no possibility of his fleeing from justice. In this view of the matter, I am inclined to release the applicant on bail. Hence, the following order is passed :-

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.35,000/- (Rs.Thirty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.0439 of 2021, registered with Satara Police Station, Dist.Aurangabad, under Sections 302, 307 read with Section 34 of the Indian Penal Code and on condition that he shall not tamper the prosecution evidence.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in this order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**