

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

BAIL APPLICATION NO. 223 OF 2022

**SUNDAR S/O. SATISH GAVALI
VERSUS
THE STATE OF MAHARASHTRA**

Mr.A.S. More, Advocate for the applicant.

Mr.S.B. Narwade, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 28.04.2022**

PC :-

01. The applicant has been arrested on 29.12.2020 in connection with Crime No.379 of 2020, registered with Naldurg Police Station, District – Osmanabad for the offences punishable under section 302, 307 of the Indian Penal Code.

02. Learned Advocate appearing for the applicant submits that the investigation is completed and charge-sheet has been filed. Therefore, custodial interrogation of the applicant is no longer required. Perusal of the FIR would show that ingredients of offence punishable under section 302 of the IPC will not be attracted because it was not pre-planned attack by the applicant. In view of statement of injured – Sahadeo Dhakne, it is to be seen that he had never identified the assailants. The deceased is one Ganesh Dagadu Sagle. The post-mortem report shows that there was only one injury in column No.17 i.e. CLW over forehead, above left eyebrow and the cause of

death that is given is “due to cardio-respiratory failure due to hemorrhagic shock due to injury to heart and lung and brain causing hematoma”. However, viscera has been preserved. The single blow could not have led to death. No identification parade was conducted. With such kind of evidence the applicant need not be languished in jail, as it is going to take time to stand the trial. The applicant is ready to abide by the terms of the bail.

03. Per contra, learned APP strongly objected the application saying that there is ample evidence against the applicant. He has caused fatal injury with iron rod. The rod by which he had given blow has been recovered by him. There are eye witnesses to the incident and therefore the application deserves to be rejected.

04. It is to be noted that the FIR has been lodged by Jitendra Koli, who is serving as Police Head Constable with Naldurg Police Station. He had received information on phone stating that he is one Akshay Bhosale, son of owner of Rudra Hotel. He informed that three persons assaulted to each other. Out of that one has received severe injury and fell down in unconscious state. The informant, therefore, went to the said spot along with other police. That person had received head injury and thereafter enquiry was made by the informant with said Akshay Bhosale. He had seen the assailants. The statement of Akshay Bhosale would clarify that he had seen the incident. Now, according to the applicant the identification parade has not been held. Merely on the basis of statement of one person, whether benefit of not holding any identification parade can be given or not is a question. But it is to be noted

that other injured persons or those persons, who were along with deceased, their statements have been recorded under section 161 of the Cr.P.C. They clearly say that the applicant was the person who had assaulted the deceased with iron rod. The iron rod has been recovered and the cause of death is head injury. Therefore, when there is direct evidence in the nature of statements of eye witnesses, the applicant cannot be granted discretionary relief under section 439 of the Cr.P.C.

05. The application stands rejected.

[SMT. VIBHA KANKANWADI, J.]