

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

930 BAIL APPLICATION NO.225 OF 2022

1. KUNAL SUNIL DHOKATE
2. VIJAY SUNIL DHOKATE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Salunke Sudarshan J.
APP for Respondents/State : Mr. V.S. Badakh
...

CORAM : M.G. SEWLIKAR, J.
DATE : 1st March, 2022

PC.:-

By this application applicant is seeking his release on bail in connection with Crime No.264/2021 registered with Kalamb Police Station, District Osmanabad under Section 302, 307, 326, 147, 148, 149, 504 of the I.P.C.

2. Facts leading to the application in brief are that informant and Mehboob (since deceased) were traveling on motorcycle on 21st July, 2021 at 8.00 pm. Mehboob stopped the motorcycle at the shop of the applicant. Applicant-Kunal came there and objected to their presence at that spot. Altercation ensued between them. Thereafter, applicant-Kunal went home and returned along with applicant-Vijay and accused-Rahul. They all were

armed with iron rod. Accused Rahul delivered a blow of iron rod on the ankle of the informant and caused fracture. Accused-Vijay delivered a blow of iron rod on the head of Mehboob because of which Mehboob fell down. Accused-Kunal also delivered a blow of iron rod on the head of the deceased. Other accused came there and beat him with kicks and fist blows. Mehboob was shifted to the hospital. He was advised to be taken to Civil Hospital, Osmanabad. On arrival, Mehboob was declared dead. On these allegations FIR came to be lodged against the applicants under the aforesaid sections.

3. Heard Shri Salunke learned counsel for the applicant and Shri Badakh learned APP for the State.

4. Learned counsel Shri Salunke submits that the Medical officer has opined that informant was under the influence of liquor and his speech was incoherent. He further submits that the prosecution case is that applicant nos.1 and 2 both assaulted the deceased-Mehboob by means of iron rod, however, there was only one injury on the head of Mehboob. Therefore, it is difficult to determine as to who assaulted the deceased.

5. Charge-sheet is filed. On perusal of the opinion of the Medical Officer, it is clear that informant was not in a position to speak as he was under the influence of alcohol. Learned APP Shri Badakh submits that there

are statement of eye witnesses. These statement of eye witnesses are of little assistance to the prosecution. All the eye witnesses stated that both the applicants assaulted the deceased-Mehboob. However, post mortem report shows that Mehboob had only one injury on head. Therefore, at this *prima facie* stage it is difficult to determine as to who assaulted the deceased. In view of this, I am inclined to release the applicants on bail. Applicants have no criminal antecedents. They are not likely to flee from justice. In this view of the matter, the following order is passed.

ORDER

- I) Application is allowed.
- II) Each of the applicants be released on PR bond of Rs.25,000/- with one solvent surety in the like amount each, in connection with Crime No.264/2021 under Section 302, 307, 326, 147, 148, 149, 504 of the I.P.C. with Kalamb Police Station, District Osmanabad.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]