

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

923 BAIL APPLICATION NO.252 OF 2022

Ajay Mahipal Valvi
Age: 24 years, Occu.: Agriculture,
R/o. Ganesh Budhawal,
Taluka Taloda, Dist.Nandurbar. ..Applicant

VERSUS

The State of Maharashtra ..Respondent

...
Advocate for Applicant : Shri Amit S. Savale
APP for Respondent : Shri V.S.Badakh

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CORAM : M.G.SEWLIKAR, J.

DATE: 9th March, 2022

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.1035 of 2020, registered with Taloda Police Station, District Nandurbar, under Sections 302, 341, 504, 506 read with Section 34 of the Indian Penal Code.

2. It is alleged in the FIR that on 28th November, 2020 between 09:00 and 09:15 p.m. informant had been to the Hand-Pump for bringing drinking water. At that time, applicant closed the gate. He was armed with an axe. There was verbal altercation between applicant and informant. At that time,

accused No.2 was sitting in the compound on a cot. On hearing commotion, deceased who was the son of the informant, came there. Verbal altercation followed between the deceased and the applicant. Thereupon, applicant hit on the abdomen of the deceased by means of handle of an axe. Soon thereafter, accused No.2 took axe from the applicant and delivered a blow of handle of axe on the abdomen of the deceased. The deceased was shifted to the Hospital where he was declared dead.

3. Heard Shri A.S.Savale, learned counsel for the applicant and Shri V.S.Badakh, learned APP for the respondent-State.

4. Shri Savale, learned counsel for the applicant submits that incident occurred in the heat of passion and on the spur of the moment. He further submits that applicant had no intention to commit murder of the deceased. He submits that applicant was armed with an axe but he did not assault by means of axe but he used the handle to assault the deceased. He, therefore, submits that offence under Section 302 of the Indian Penal Code cannot be said to be made out.

5. Shri Badakh, learned APP for the respondent-State submits that incident took place during the night hours. Applicant chose

a vital part of the body i.e. abdomen to assault the deceased. He, therefore, seeks rejection of the application.

6. On perusal of the post mortem report, it is seen that the deceased had following injuries on his body -

- (a) contusion of size of 4cm x 3cm present on epigastric region of abdomen,
- (b) contusion of size of 5cm x 2cm present on left lumbar region of abdomen,
- (c) abrasion of size 1.5cm x 1cm present on posterior surface of left forearm and
- (d) abrasion of size 1cm x 0.5cm present on posterior surface of left elbow.

Admittedly, applicant was holding an axe in his hand but he did not assault the deceased by sharp side of the axe and he used handle to assault the deceased. No serious injury appears to have been caused to the deceased. Applicant has no criminal antecedents. He is not likely to flee from justice. The weapon used was handle of an axe and not the sharp side of the axe. In view of this, during the trial only, it will be clear whether applicant had intention to commit the murder of the deceased. In this view of the matter, I am inclined to release the applicant on bail. Hence, the order :-

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.40,000/- (Rs. Forty thousand only) with one solvent surety in the like amount, in connection with Crime No.1035 of 2020, registered with Taloda Police Station, District Nandurbar, under Sections 302, 341, 504, 506 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