

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

BAIL APPLICATION NO.691 OF 2022

Gajanan s/o Vittalrao Hodgir

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. S.P. Sonpawale, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

DATE : 20th JULY, 2022.

PER COURT :

This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.183/2021, registered at Kurunda Police Station, District Hingoli for the offences punishable under Sections 302, 323, 504, 506 read with Section 34 of the Indian Penal Code. The First Information Report (F.I.R.) has been lodged on 28/8/2021. It is alleged in the F.I.R. that, by 10.00 p.m. on 27/8/2021, there was a quarrel between Sheshrao on one hand and the applicant and co-accused Dnyaneshwar on the other. It was a dispute over cutting of trees standing on the bandh that separates the lands of both. From the allegations in the F.I.R., what has

been alleged is that, co-accused Shivnanda, wife of the applicant threw chilly powder in the eye of victim. The applicant caught hold of hand of the deceased. While the quarrel was going on, Dnyaneshwar went home, fetched an axe and assaulted on the head of the deceased. On the same lines are the statements of other witnesses.

2. The learned A.P.P. would submit that, the applicant had caught hold of the hand only with a view to not to allow the victim run away from the place. He urged for rejection of the application.

3. While granting bail to the co-accused Shivnanda, the Court has observed that, "post mortem report did not indicate even particles of chilly powder in the eyes of the deceased". Even we take the case of the prosecution as it is that the applicant had caught hold of the hands of the deceased, there is prima facie nothing to indicate that the same was with an intention to facilitate the main accused to assault or kill the deceased, since the averments in the F.I.R. indicate, while the quarrel was going on, Dnyaneshwar on his own went home and came out with an axe and then assaulted therewith. As such, the intention to kill the deceased could be attributed to Dnyaneshwar alone. These are the prima facie

observations. The trial Court may not be influenced therewith.

4. Since the role of the applicant is to have held the hand of the victim, his involvement is made out on the basis of Section 34 of the Indian Penal Code. Therefore, I am inclined to grant bail to the applicant. Hence the order :-

ORDER

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime No.183/2021, registered at Kurunda Police Station, District Hingoli for the offences punishable under Sections 302, 323, 504, 506 read with Section 34 of the Indian Penal Code on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-