

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

BAIL APPLICATION NO. 750 OF 2022

Maroti @ Manoj Ashok Patil

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. S.B. Bhapkar, Advocate for applicant

Mr. G.O. Wattamwar, A.P.P for respondent – State

Mr. V.R. Kalyankar, Advocate for assist to A.P.P

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CORAM : R.G. AVACHAT, J.

RESERVED ON : 22nd JULY, 2022

PRONOUNCED ON : 29th JULY, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 182 of 2021 registered with Umri Police Station, Dist. Nanded for the offences punishable under Sections 302, 307, 323, 504, 143, 147, 148 and 149 of the Indian Penal Code ('I.P.C.').

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by mother of the deceased on 11th August, 2021. It is the case of the informant that she has four daughters and one son – Mahesh (deceased). While she was at home on 09th August, 2021

by 09.30 in the morning, her daughter Usha came home to relate her that while Mahesh was proceeding on his motorbike from in front of the house of one Khushal Patil (co-accused), Khushal pulled Mahesh and took him to his house. Thereupon, the informant alongwith Usha rushed there to see that Mahesh was being assaulted by Khushal, his wife Sunita, son Aditya, Shailesh, Tryambak and the present applicant. Both of them brought Mahesh out of the house. The accused still followed Mahesh and beat him up with fists and kicks. While the deceased was being brought home by the informant and her daughter, he told them that earlier there was a quarrel between him and Aditya (juvenile in conflict with law). To take revenge thereof, co-accused Khushal had taken him to his house and he was assaulted by one and all his family members. He also stated that the applicant herein assaulted on his head with a cricket bat. It is also the case of the informant that the deceased had bouts of vomiting. He became unconscious. The deceased was first rushed to the dispensary of Dr. Aneray at Umri. Then he was shifted to Arogya Hospital at Nizamabad. He breath his last there on 12th August, 2021.

4. Initially a crime for the offences punishable under Sections 307, 143, 147, 148 and 149 of the I.P.C. was registered. On demise of Mahesh, Section 302 of the I.P.C. was invoked. On investigation, the applicant and all his family members came to be proceeded against by filing the charge-sheet.

5. Learned counsel for the applicant would submit that there is delay of little over two and half days in lodging the F.I.R. History given to the medical officer indicates that the deceased was assaulted by unknown persons. All the co-accused have been granted bail. The cause of death is cerebral infarction. The same cannot be associated with an assault with bat. The statements of other witnesses, who claimed to have witnessed the incident, are inconsistent with each other. The applicant is in jail for long. He, therefore, urged for grant of application.

6. Learned A.P.P. and learned counsel for the informant would submit that the 'only son' of the informant has been murdered. The applicant cannot claim parity since vital blow is attributed to him. What has been narrated in the F.I.R. is on the eye witness count besides oral dying declaration made by the deceased. There are eye witnesses to the incident as well. According to learned counsel for the informant, because of assault on the head with cricket bat, the deceased died of cerebral infarction. They, ultimately urged for rejection of the application.

7. Considered the submissions advanced. Prelude to the incident is stated to be a quarrel between the deceased and one Aditya (juvenile in conflict with law). While the deceased was proceeding on his motorbike, Khushal intercepted him. Khushal pulled him and then took him to his house.

All the co-accused and the applicant herein thrashed the deceased at their house. The applicant is alleged to have assaulted the deceased with a cricket bat. According to the informant, on having been informed that her son is being beaten up, she alongwith her daughter rushed to the house of the accused and brought the deceased out of their house. Still the applicant and co-accused followed him and beat him up.

8. This Court is inclined to grant the applicant bail mainly for the following reasons :-

- (i) There is delay of two and half days in lodging the F.I.R.
- (ii) In the medical history given at Arogya Hospital, Nizamabad, it has been narrated that the deceased was assaulted by unknown persons.
- (iii) Cause of death is cerebral infarction. It means stoppage of blood supply to the brain due to blockage of artery. It was stated that due to hit on the head with bat no such cause of death can be there. As a result of hitting on head with a bat there should have been hemorrhage.

9. It appears that all the family members of the other side are alleged to have assaulted the deceased. Learned counsel for the applicant has every reason to contend that none of the family members has been spared

since there is delay of two and half days in lodging the F.I.R. As per the statement of the informant, she had brought the deceased home. Whereas, as per the statement of an eye witness – Shivshankar Patil, he saw the deceased laying unconscious on the road in front of his (deceased) house. The statements of the eye witnesses are dated 14th August, 2021 i.e. five days after the alleged incident. It will take time for commencement of trial and conclusion thereof.

10. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 182 of 2021 registered with Umri Police Station, Dist. Nanded for the offences punishable under Sections 302, 307, 323, 504, 143, 147, 148 and 149 of the Indian Penal Code, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall not enter village Nimtek, Tq. Umri, Dist. Nanded until conclusion of trial.

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

(R.G. AVACHAT, J.)