

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

BAIL APPLICATION NO.767 OF 2022

Sukhdev Shivajirao Rasal

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.S.J.Salunke, Advocate for applicant

Mr.A.V.Deshmukh, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 22, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0006 of 2022 registered with Parbhani Rural Police Station, Dist.Parbhani, for the offence punishable under Section 302 of Indian Penal Code.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the uncle of the deceased on 11.01.2022. The applicant is none other than the brother of the deceased. He is alleged to have committed murder of his own brother on the intervening night of 09.01.2022 and 10.01.2022 at their own residence. It has been averred in the FIR that

the deceased – Sandipan was heavily addicted to alcohol. He would pick up quarrel with the villagers and the family members as well. The informant had seen him at Nandapur Phata at 09.30 p.m. on 09.01.2022. On the following morning, the applicant told the informant that Sukhdev is lying dead in the house. He has suffered head injury. The matter was, therefore, reported to the police, alleging therein that some unknown person has committed murder of Sandipan.

4. It is the case of the prosecution that the applicant has committed murder of his brother by assaulting him with blowing pipe. The applicant gave disclosure statement pursuant to which said pipe came to be recovered.

5. Learned counsel for the applicant would submit that at the relevant time, both deceased and applicant were in the house during the night. The applicant left home early in the morning and after return home, he found Sandipan dead. As such, according to him, the case is based on circumstantial evidence. On investigation, charge sheet has been filed. C.A. report does not indicate the blowing pipe to have stained with blood. He, therefore, urged for grant of bail.

6. Learned APP would, on the other hand, submit that it is a serious offence. It is the applicant who alone had opportunity to eliminate his brother since both of them were home during the night and in the morning as well. He, therefore, urged for rejection of the application.

7. The deceased was alcoholic. He would pick up quarrel with the villagers and the family members as well. The post mortem report does not indicate the probable time of death of the deceased. The applicant cleverly came with a defence that he had gone in the village in the morning for some time and on return, he found his brother dead. He meant to say that during that time, the deceased must have been assaulted. As such, the case is based on circumstantial evidence. Although the weapon with which the deceased was allegedly assaulted has been recovered at the instance of the applicant, it bears no blood stains. On investigation, charge sheet has been filed. It will take time for commencement and conclusion of the trial.

8. In view of the above, the Court is inclined to grant the applicant bail. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0006 of 2022 registered with Parbhani Rural Police Station, Dist.Parbhani, for the offence punishable under Section 302 of Indian Penal Code, on executing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety in the like amount.

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

[R.G. AVACHAT, J.]

KBP