

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

BAIL APPLICATION NO. 1038 OF 2022

Javed Abbas Shaikh	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. S. E. Shekade, Advocate for applicant
Mr. S. P. Sonpawale, APP for respondent - State

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**WITH
CRIMINAL APPLICATION NO. 2580 OF 2022**

Mahesh Ankush Potare	... Applicant
Versus	
Javed Abbas Shaikh and another	... Respondents

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Mr. M. B. Sandanshiv, Advocate for applicant
Mr. S. E. Shekade, Advocate for respondent No.1
Mr. S. P. Sonpawale, APP for respondent No.2 - State

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CORAM : R. G. AVACHAT, J.

DATED : 11th AUGUST, 2022

PER COURT :-

1. Criminal Application No. 2580 of 2022 is allowed. The original complainant is permitted to assist the learned APP.

2. Heard. 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.0046/2022, registered at Karjat Police Station, District Ahmednagar, for the offence punishable under Section 302 read with 34 of the Indian Penal Code.

3. Perused the First Information Report (FIR) and related papers.

The FIR has been lodged by brother of deceased on 25.01.2022. It is averred in the FIR that Nitin (deceased) was alcoholic. The applicant and co-accused Anand were friends of deceased Nitin. The trio would consume liquor together. Nitin had left the house on 23.01.2022. He did not return home until next day. A search for him was therefore made. His dead body was found in nearby canal. Post-mortem report indicated him to have died of asphyxia due to drowning. The informant lodged the FIR alleging the applicant and co-accused Anand to have murdered Nitin by drowning.

4. The crime was investigated. The applicant and co-accused have been charge-sheeted.

5. The learned Advocate for the applicant would submit that the case is based on circumstantial evidence. Except last scene

theory, there is nothing to indicate the applicant's involvement in the alleged crime. The statements of witnesses indicate the applicant had parted company of the deceased and co-accused after they consumed liquor. The conduct of the applicant is consistent with his innocence. The learned Advocate, therefore, urged for grant of bail.

6. The learned APP and the learned Advocate for the invervenor would, on the other hand, submit that the motorcycle of the deceased was seized from possession of the applicant herein. The deceased was in the company of the applicant and the co-accused some time before he met with death. Both of them submitted that it is a serious offence. Instead of granting bail, the trial Court may be requested to expedite hearing of the case. Both, the learned APP and the learned Advocate for intervenor, therefore, urge for rejection of the application.

7. Considered the submissions advanced. Perused the FIR and the related police papers. The case is based on circumstantial evidence. The deceased was alcoholic. The applicant and co-accused were his friends. The trio would consume alcohol together. There is material to indicate that on the given day, they had been to one Dharma for liquor. They consumed alcohol there. The deceased was

heavily drunk. There is further material to indicate that the applicant had parted with company of the deceased and co-accused on the motorcycle of the deceased. Finding of the motorcycle of the deceased with the applicant herein, may therefore not be an incriminating circumstance, at least, for rejecting the bail application. There are statements of witnesses to indicate that the co-accused and the deceased were together. On the next day, the applicant himself realised that the deceased and co-accused did not return home. The only incriminating material would be that of the applicant having been in the company of the deceased sometime before he met with death. As stated above, there is material to suggest the applicant had parted with the company of the deceased and the co-accused. Without making any further observations, this Court is of the view that it is a case for grant of bail. The bail application therefore allowed in terms of following order

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0046/2022, registered at Karjat Police Station, District Ahmednagar, for the offence punishable under Section 302 read with 34 of the

Indian Penal Code, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.

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

[R. G. AVACHAT, J.]

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