

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

**BAIL APPLICATION NO. 1113 OF 2022**

Kapil Ramesh Joshi

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. R.G. Hange, Advocate for applicant

Mr. A.V. Deshmukh, A.P.P. for respondent – State

Mr. N.B. Narwade, Advocate for assist to A.P.P.

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**CORAM : R.G. AVACHAT, J.**

**DATE : 05<sup>th</sup> SEPTEMBER, 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. 36 of 2022 registered with Shivajinagar Police Station, Dist. Beed for the offences punishable under Sections 302, 307, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

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

3. The F.I.R. has been lodged by one Yuvraj Devawale on 22<sup>nd</sup> January, 2022. The informant is serving as a Manager of Hotel 'Prathmesh', Ambika Chowk, Beed. The applicant herein was a regular customer of the

said hotel. He would visit the hotel for taking meals. There was, therefore, acquaintance between the informant and the applicant. The applicant along with two friends had been to the hotel for dinner by 08:00 p.m. on 16<sup>th</sup> January, 2022. After their dinner was over, they left the hotel. The applicant immediately came to the counter and told the informant that his motorbike, that was parked just outside the hotel, was not there. The informant, therefore, asked him to lodge a police report. The applicant got annoyed. He abused and slapped the informant. He also threatened the informant of dire consequences if the motorbike was not found.

4. It is also the case of the informant that he shared the incident with his maternal uncle – Kishor (deceased) and elder maternal uncle's son – Shankesh. They told the informant to have acquaintance with the applicant. They, therefore, decided to meet the applicant to reason with him. They first went to his house to learn he had gone to one of his friends near ITI quarters. They, therefore, went there to find the applicant and co-accused present at a lamp post. The applicant was armed with a wooden rod, co-accused – Prathmesh Ghule was armed with an iron rod and other co-accused had also with them wooden rods. The applicant started abusing the trio questioning them as to why did they come there. The applicant and co-accused started beating them up. Kishor was assaulted on his head with iron and wooden rods. As a result, he fell unconscious. He was, therefore, rushed to Lotus Hospital, Beed. Since he was critical, he was shifted to Life Line

Hospital, Aurangabad. He breath his last there. On investigation, charge-sheet has been filed against the applicant and three others.

5. Learned counsel for the applicant would submit that there is delay of seven days in lodging of F.I.R. While the deceased was admitted to the hospital, the history was given as – road traffic accident. Scene of offence panchanama indicates the deceased was lying by the side of his motorbike. Assault on the head of the deceased is not attributed to the applicant. Had the deceased really been assaulted on his head with number of blows, the head would have been smashed. The deceased did not suffer external injury. The C.C.T.V. footage relied on by the prosecution indicates the applicant to have gone out of the campus after the incident was over. According to learned counsel, on investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial. He, therefore, urged for grant of the application.

6. Learned A.P.P. and learned counsel for the intervener would, on the other hand, submit that there is eye witness account. The applicant and co-accused assaulted the deceased on his head with wooden and iron rods. The deceased died of head injury. The applicant is equally responsible for death of the deceased. The C.C.T.V. footage indicates the applicant to have taken a *bamboo* stick from the roof of a room and beat up the informant therewith. Learned counsel, therefore, urged for rejection of the application.

7. Considered the submissions advanced. There is prelude to the incident in question. The applicant had been to a hotel 'Prathmesh' for dinner. His motorbike went missing from the hotel campus. He had, therefore, quarreled with the informant. The informant, deceased and the informant's cousin had, therefore, been to the applicant's house ostensibly to reason with him. As he was not there, they went to ITI side as the applicant was learned to have been there. It is also the case of prosecution that the applicant and co-accused were present at a lamp post. The applicant started abusing the trio. The applicant and co-accused assaulted them.

8. The informant has given a statement under Section 164 of Code of Criminal Procedure. An assault on the head of the deceased with iron rod is attributed to Prathmesh Ghule. The C.C.T.V. footage of the incident was relied on. This Court has watched the same. It appears there from that the deceased might have been assaulted first by the co-accused. The footage further indicates the applicant to have taken a *bamboo* stick from the roof of a room and went out of the compound of the premises. He might have assaulted the deceased therewith. From the C.C.T.V. footage, this Court finds that the co-accused were hurriedly moving with wooden rods in their hands before the applicant went out with a bamboo. The same suggests the deceased must have been assaulted by the co-accused first and then the applicant might have assaulted the deceased. The deceased died of head

injury. No external injury was noticed on his head. Blow with an iron rod is attributed to the co-accused. Considering these facts, I am inclined to grant the applicant bail.

9. 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 on bail, in connection with Crime No. 36 of 2022 registered with Shivajinagar Police Station, Dist. Beed for the offences punishable under Sections 302, 307, 323, 504 and 506 read with Section 34 of the Indian Penal Code, on 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 attend Shivajinagar Police Station, Dist. Beed once a week i.e. on Sunday by 11:00 p.m. for next six months.

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

**( R.G. AVACHAT, J. )**