

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

BAIL APPLICATION NO.1277 OF 2022

Sandip s/o. Prabhakar Gayke	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr.S.B.Bhapkar, Advocate for applicant
Mr.A.V.Deshmukh, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 16, 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.28 of 2022 registered with Dharur Police Station, Dist. Beed.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by one Vijay Gayke on 25.02.2022. In short, the case of prosecution is that the applicant is son of brother of the informant. Both informant and his brother has jointly purchased the land in gut no.143/3. Since the informant was residing at Aurangabad, he had given his share to the applicant's younger brother – Manoj for cultivation. Manoj passed

away in 2020. The informant, therefore, gave his land to his another brother – Ankush for cultivation. The applicant was, therefore, annoyed. It is also the case of prosecution that the a civil suit is pending between the informant and his brother – Prabhakar. On the given day, i.e. on 24.02.2022 by 10.00 a.m., the informant was proceeding towards his home on his foot. The applicant came on motorbike and challenged him that he will cultivate the land. As per the case of the prosecution, quarrel ensued between the two. The informant's brother – Ankush intervened. The applicant picked up a wooden *Dhapali* from nearby heap and assaulted on the head of Ankush therewith. Ankush fell unconscious. He was rushed to the hospital. He died on 27.02.2022.

4. Learned counsel for the applicant would submit that the applicant did not have intention to kill the deceased. The incident took place in the spur of moment. It was preceded by exchange of heated words and fight as well. He invited this Court's attention to the statements recorded under Section 164 of the Code of Criminal Procedure of one Nitin and Dattu. He, therefore, urged for grant of bail.

5. Learned APP would, on the other hand, submit that the deceased died of head injury. The deceased suffered not less than twelve injuries. If the applicant is granted bail, he may commit similar offence. Since the assault was made on the head, intention to kill was writ large. He, therefore, urged for rejection of the application.

6. Perused the FIR and the related papers. Considered the submissions advanced.

7. There is dispute between the applicant's family and that of the informant over agricultural land. The civil suit is *sub-judice*. On given day, the applicant met the informant and picked up a quarrel. The applicant did not have any article with him that time. The quarrel escalated. The informant's brother, Ankush, intervened. The applicant picked up a wooden *Dhapali* lying nearby and assaulted on the head of Ankush therewith. The same suggests that the incident took place in the spur of moment. The applicant is behind the bars for little over six months. It will take time for commencement and conclusion of the trial. In view of the above, the Court is inclined to grant the applicant bail.

8. The observations made in this order are *prima facie* in nature. The trial Court shall not be influenced thereby.

9. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.28 of 2022 registered with Dharur Police Station, Dist. Beed, 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 not tamper with the prosecution evidence.

(iv) Until conclusion of the trial, the applicant shall not enter village Adus, Tq. Kaij, Dist. Beed.

[R.G. AVACHAT, J.]

KBP