

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1397 OF 2022
WITH APPLN/3093/2022 IN BA/1397/2022

Govind s/o. Raghoji Donerao,
Age 65 years, Occu. Agril.,
R/o. Village Kopra, Taluka Hadgaon,
District Nanded.

.. Applicant

Versus

The State of Maharashtra
Through Tamsa Police Station,
District Nanded.

.. Respondent

Mr. Dhananjay M. Shinde, Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for Respondent/State;
Mr. Madhukar M. Parghane, Advocate for Applicant in Application
No. 3093 of 2022

CORAM : S. G. MEHARE, J.

DATE : 15-11-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the first informant.
2. The applicant is seeking bail under Section 439 of the Code of Criminal Procedure, 1973, in Crime No. 44 of 2022, registered with Tamsa Police Station, District Nanded, for the offence punishable under Sections 302, 324, 504 read with Section 34 of the Indian Penal Code.

3. The applicant has been charged with the offence of murder committed in the field of deceased. The applicant and co-accused demanded liquor from the deceased. When he told them that he had no liquor, the applicant and co-accused assaulted the deceased. The co-accused assaulted the deceased with the axe on his head. Due to the assault, the deceased lost his life.

4. The learned counsel for the applicant would submit that the applicant is 65 years old. There was a delay of four days in lodging the first information report. Considering the allegations from the first information report, it may be said that there was no motive to commit the crime. The applicant has tried to pacify the dispute. The person who allegedly assaulted the deceased is his nephew (sister's son). The applicant has been arraigned as an accused, alleging that he had shared a common intention. The applicant has not used any weapon. The applicant did not abscond. It is a case of a single blow. The weapons have been seized from the spot of the incident. All the witnesses were deposed stereotypes. There are no antecedents to the discredit of the applicant. Under trial committee had also recommended the applicant for granting bail. However, learned counsel fairly conceded that the recommendation is not binding on the Court. Considering the facts of the case and role attributed to the applicant, the applicant may be granted bail.

5. The learned A.P.P. for the respondent/State and the learned

counsel for the first informant have vehemently opposed the application. They would argue that the applicant along with other co-accused, were present on the spot of the incident. They were asking him for liquor, and when he denied it, they became aggressive and assaulted him with an axe. The offence is serious. Apart from that, there are eyewitnesses. The witnesses state the role attributed to the applicant. Considering the role attributed to him and his active participation, he may not be granted bail.

6. Perused the charge sheet. Undoubtedly, the applicant was present on the spot of the incident. All the accused were demanding liquor from the deceased. When he denied having liquor, the applicant and other co-accused became aggressive and assaulted him with an axe. The applicant had caught the deceased. The offence is apparently serious. *Prima facie, there is* evidence against the applicant. Considering the evidence collected by the Investigating Officer against the applicant, it can not be said that the applicant may not be convicted. The learned counsel for the applicant has argued that there was no active participation of the applicant, and at the spur of the moment, the incident happened. However, there are no circumstances to believe the same. The fact remains that the applicant and co-accused went on the spot of the incident and demanded liquor, and as soon as the deceased was denied, they became aggressive and killed the deceased. There is ample evidence against the applicant. The

other co-accused, who is a relative of the applicant, has been absconding since the day of the incident. Considering the evidence collected by the Investigating Officer in its entirety against the applicant and the gravity of the offence, it is not desirable to grant bail to the applicant. Hence, the application stands dismissed.

7. Criminal Application No. 3093 of 2022 stands allowed.

8. Needless to state, the observations made here-in-above are restricted to the bail application only.

(S. G. MEHARE)
JUDGE

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