

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

BAIL APPLICATION NO. 1448 OF 2022

Shekhar @ Rahul Shrimant Kale

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. K.D. Pote, Advocate a/w Mrs. H.K. Pote, Advocate h/f Mr. A.G. Ambtekar,
Advocate for applicant

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

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CORAM : R.G. AVACHAT, J.

DATE : 03rd OCTOBER, 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. 403 of 2021 registered with Gangapur Police Station, Dist. Aurangabad for the offence punishable under Section 302 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 son of the deceased on 26th October, 2021. It is his case that the applicant is cousin of the informant.

About 4-5 years before, the applicant was in jail. The informant had paid a sum of Rs.3,000/- to his wife as financial assistance. On release of the applicant from jail, the informant was asking him to pay back his money. The informant has, therefore, retained with him the applicant's cell phone on 12th October, 2021.

4. It is the case of the informant that on 13th October, 2021 he heard cries of his mother from the agricultural field. He, therefore, went there to see the applicant assaulting his mother with a bamboo stick. The informant's mother was rushed to the hospital. She breath her last on 25th October, 2021. The postmortem report indicates the cause of death to be head injury.

5. Learned counsel for the applicant would submit that there is delay of over twelve days in lodging of F.I.R. Although the deceased was injured and unconscious, the informant claims to have seen the incident. He, therefore, could have lodged the F.I.R. same day or at least on the following day. According to learned counsel, the applicant is in jail for about an year. On investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial. He, therefore, urged to grant the applicant bail.

6. Learned A.P.P. would, on the other hand, submit that there are eye witnesses to the incident. The victim was seriously injured. She was

hospitalised. Her relations were expected to attend her first. The F.I.R. has, therefore, been lodged only on demise of the victim. The delay has thus been properly explained. He also advert the Court's attention to MLC papers to indicate assault on the victim. According to him, the applicant has criminal antecedents, particularly the offence against human body. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. The applicant is alleged to have assaulted his distant aunt with a bamboo stick. The incident took place on 13th October, 2021 in an agricultural field. The deceased died of head injuries twelve days thereafter. The informant claimed to have witnessed the incident. It was expected from him to lodge the F.I.R. immediately or at least on the following day. The reason behind the assault is stated to be the informant asking the applicant to pay back a sum of Rs.3,000/-, which was paid to wife the applicant.

8. The applicant is in jail for about an year. There is delay of little over twelve days in lodging of F.I.R. The explanation for delay offered by the informant would necessarily to be subjected to his cross-examination during trial. On investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial. The Court is, therefore, 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. 403 of 2021 registered with Gangapur Police Station, Dist. Aurangabad for the offence punishable under Section 302 of the Indian Penal Code, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall mark his attendance with Gangapur Police Station, Dist. Aurangabad on every Sunday between 10:00 a.m. to 11:00 a.m. till next eight months.

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

(R.G. AVACHAT, J.)

SSD