

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

ANTICIPATORY BAIL APPLICATION NO.1235 OF 2022

SUBHASH DEORAO BAROTE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Siddiqui Sohail E
APP for Respondent/State : Mr. V.M. Kagne

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CORAM : S.G. MEHARE, J.

DATED : 20th SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. It has been alleged in the FIR that deceased was going to drive the vehicle with the applicant. He used to consume liquor. On the date of incident, he had consumed the liquor hence, the complainant asked him why he consumes liquor. Then he assaulted her with belt and slaps. That time, the wife of the applicant and the lady next door intervened. The applicant abused the deceased from down. The deceased again started quarreling with the complainant and again the applicant and his wife went inside the room of the deceased. The applicant slapped him. They asked the complainant to go down. When she was coming down, immediately the applicant and his wife came from behind and said that the deceased fell down from the balcony. On the basis of these allegations, the FIR is registered.

3. Learned counsel for the applicant would submit that it was purely an accident. The deceased fell down from the balcony as he had consumed liquor. The applicant and his wife went to separate the quarrel between the deceased and the complainant. They brought her down and in the meanwhile, he fell down. The deceased did not die due to the acts of the applicant. On the contrary, the applicant took him to the hospital. The offence registered against the applicant is totally false. Nothing is to be recovered from him. Hence, anticipatory bail may be granted to him.

4. Learned APP has opposed the application contending that the death of the deceased was suspicious. The applicant was present at the time of the incident. The possibility of pushing him down cannot be ruled out. He has also argued that the CCTV footage of the spot of the incident was available. The DVR was recovered but the incident was not recorded. Hence, the applicant has no case for anticipatory bail.

5. Perused the papers produced by the learned APP. After lodging the FIR, the statement of the complainant was recorded by the police and by the learned Magistrate. Her statement is not consistent as regards the allegations levelled against the applicant. In one of the statement she has categorically stated that immediately after the incident, she went near the deceased and he told her that he fell down from the balcony and in another statement, she has stated

that her in-laws insisted her to report against the applicant. The first informant was present on the spot of the incident. Immediately after the incident, the applicant and his wife told her that her husband fell down from the balcony. No doubt, the post-mortem shows that the deceased had a head injury. However, having regard to the facts and circumstances of the case, there appears substance in the arguments of the learned counsel for the applicant that the possibility of accidental death cannot be ruled out. That apart, the eye witness/complainant has inconsistent statements. The oral dying declaration of the deceased supports the contention of the applicant that it was an accidental death.

6. Considering the facts and circumstances of the case, this appears to be a good case for anticipatory bail though a serious offence under Section 302 of the Indian Penal Code is registered. Hence, the following order :

ORDER

(A) Application is allowed.

(B) In the event of arrest, the applicant, Subhash Deorao Barote, be released on anticipatory bail, on executing P.B. and S.B. of Rs.15,000/- (Fifteen Thousand) with one solvent surety in the like amount in Crime No.533 of 2022, registered with Taluka Jalna Police Station, District Jalna for the offence punishable under Sections 302, 506 r/w 34 of the Indian Penal Code, on the condition that he shall

(4)

attend the police station on every Monday between 11.00 am to 01.00 pm till the charge sheet is filed.

(S.G. MEHARE, J.)

Mujaheed//