

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

923 BAIL APPLICATION NO.1609 OF 2022
WITH APPLN/3392/2022 IN BA/1609/2022

AAKASH JAYSING KANDHARE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Hange Rajendra G.
APP for Respondent-State : Mr. K. S. Patil.
Adv. for Complainant to Assist APP : Mr. Thigale-Naik G. K.

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CORAM : S. G. MEHARE, J.
DATE : 18.10.2022

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the complainant at length.

2. The applicant has been charged with the offence of murder. The incident happened on 16.01.2022. It has been alleged that the applicant assaulted the deceased with a wooden log. The deceased was immediately shifted to Life Line Multi Specialty Hospital at Aurangabad. He was treated there, and he died on 23.01.2022. It has been alleged that the present applicant, with co-accused Prathmesh, assaulted the deceased on the head; therefore, he died. It has also been

alleged that the applicant is a habitual offender. At the time of the incident, he was on temporary bail during Covid-19.

3. Learned counsel for the applicant has vehemently argued that the applicant did not assault the deceased. However, the applicant and others came to the house of Lucky Kandhare, and started assaulting them. The deceased was also in the compound wall of Lucky Kandhare. When he returned, he fell from the motorbike near the street pole and suffered a head injury. Therefore, the history of road traffic accident was correctly narrated to the Life Line Hospital. The Life Line Hospital has consistently recorded the same history on many occasions. However, to create the evidence, a fake M.L.C. report dated 17.01.2022 was prepared, and for the first time, it was mentioned that the deceased had a head injury in a quarrel. He would point out that the M.L.C. report does not describe the acknowledgment of the police. This consistent document of the hospital cannot be brushed aside. At the time of the incident, he was on Covid 19 bail, can not be aground to refuse bail. He also referred to C.C.T.V. footage of the house of Lucky Kandhare and vehemently argued that the applicant was not seen assaulting the deceased. The incident appears to have happened in three minutes. The prosecution has also relied

upon the C.C.T.V. footage. Prior to that, the incident happened at Prathmesh Hotel. In the footage, it could be seen that the complainant assaulted Kapil Joshi. In continuation of the said quarrel, the complainant and his associates tried to assault Kapil Joshi. They went to his home; however, he was not there. Therefore, they went to search for him at the house of the present applicant. They were aggressive and tried to assault them. Therefore, they tried to protect themselves. When the applicant and others resisted them, they started fleeing away, and during that time, the deceased fell from the motorbike and sustained an injury. There is a seven (7) days delay in lodging the F.I.R. Referring to the various documents, he prayed for bail.

4. Learned APP has opposed the application. He would submit that the Post Mortem Report reveals the skull injury over the right side, and there were linear abrasions. The weapon examination report corroborates the prosecution case that the weapons recovered may cause the injury sustained to the deceased. The applicant has antecedents to his discredit. The offence is serious. Therefore, he may not be granted bail.

5. Learned counsel appearing for the complainant has vehemently argued that the discrepancies as regards the

history of assault have been committed by the Life Line Hospital. However, the witness Yuvraj in his statement, clarified how the incident happened. His statement corroborates the Post Mortem Report. The C.C.T.V. footage indicates that after the assault by co-accused Prathamesh, the applicant was running after him and when he reached the street light, he also assaulted him on his head; therefore, he died. He also insisted the Court go through the C.C.T.V. footage. Learned counsel for the applicant tried to show him the C.C.T.V. footage from his mobile handset, but he doubted. However, he did not deny the transcription of the C.C.T.V. footage of the accused Lucky's house, nor does he have material to show that this is the incorrect transcription of the said C.C.T.V. footage. On the one hand, he is raising doubts over the footage from the mobile handset; on the other hand, he also relies on the same C.C.T.V. footage. The C.C.T.V. footage need not be watched in open Court when the transcript is not disputed. He would submit that the discrepancy in the history recorded by the hospital would not come in the way. The offence is serious. He relied on the case of ***Bohatti Devi Vs. The State of Uttar Pradesh and another, Supreme Court, Criminal Appeal No.1695 of 2022*** and pointed out that the Court has to

consider the relevant material. The ratio laid down by the Hon'ble Supreme Court need not be doubted.

6. Perused the papers and scanned the arguments advanced by the respective learned counsels. No doubt, the C.C.T.V. footage of the house of the accused, Lucky, shows that the applicant followed the deceased with a weapon. But, Co-accused Prathamesh gave the first blow to the deceased. The C.C.T.V. footage also shows that the deceased had been to the house of the Lucky and he was in his wall compound. The report was lodged seven (7) days after the incident. The history of the injury must have been stated by the deceased or the person who took him to Life Line Hospital. The history of road traffic accident was consistent. The law is that the benefit should be given to the accused. The discrepancy in the evidence, as regards the history narrated to the hospital, may be considered at this juncture. No doubt, the incident must have been happened there. But, considering the nature of the injury, abrasions and sole injury on the right fronto-parieto-temporal region, the possibility of history written by the said Life Line Hospital can also not be discarded.

7. After having gone through the papers, charge sheet and arguments, the Court may exercise discretion in favour of the applicant. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant **AAKASH JAYSING KANDHARE** be released on bail on furnishing PB. and S.B. of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety of the like amount, in Crime No.36 of 2022, registered by Police Station Shivaji Nagar, District Beed, for the offences punishable under Sections 302, 307, 323, 504, 506 read with Section 34 of the I.P.C., on the following conditions that, :
 - (a) He shall not leave the place of his residence without permission of the Court till the conclusion of the trial.
 - (b) He shall not tamper with the prosecution witnesses.
 - (c) He shall keep away from involving in a similar nature of offences.

- (iii) Criminal application No.3392 of 2022 to assist the learned APP is also allowed.

(S. G. MEHARE, J.)

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vmk/-