

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

22 BAIL APPLICATION NO.1394 OF 2021

**ARBAZ WAHED KHAN
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. N.S. Ghanekar h/f. Kahalekar Kuldip S.
APP for Respondents/State : Mr. S.B. Narwade
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 10th January, 2022**

PC.:-

Heard.

2. It is the case of prosecution that on 29th May, 2021 deceased- Majid had left the house. On the same day i.e. on 29th May, 2021 at 3.00 pm the informant who is the father of the deceased, got a message from the police station. On reaching the police station he found a dead body which had injuries on his person. The informant identified the dead body to be of his son. During the investigation it was revealed that accused Mustafa @ Parvez gave extra judicial confession to the effect that the deceased had snatched the mobile from applicant Arbaz and started running towards river Kham. When applicant Arbaz and his friends chased the deceased, the deceased fished out a

knife and demanded money in return of the mobile. A free fight ensued in which Mustafa @ Parvez and the applicant started beating the deceased with stone. The deceased died in the assault. This extra judicial confession was made to Shaikh Sohel. On these allegations crime came to be registered against the applicant.

3. Charge-sheet is filed. The only evidence against the applicant is in the nature of the extra judicial confession. It is settled principle of law that extra judicial confession is a weak type of evidence. Even if the extra judicial confession is considered what emerges is that there was a sudden fight which was actually initiated by the deceased. The deceased had snatched the mobile of the applicant and was demanding money to return the same by brandishing knife. On this count, a free fight ensued in which stones were used by applicant and accused Mustafa @ Parvez. At this *prima facie* stage it does not appear that the applicant had the intention to commit the murder of the deceased. The incident happened on the spur of the moment in the heat of passion. He does not have criminal antecedents. He will not flee from justice as he has permanent residence at Aurangabad. In this view of the matter, I am inclined to release the applicant on bail. Hence, the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.20,000/- with one solvent surety in the like amount, in connection with Crime No.340 of 2021 under Section 302 read with Section 34 of the I.P.C. with Chhawani (Cantonment) Police Station, Aurangabad on condition that he shall not pressurise the witnesses.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]