

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

923 BAIL APPLICATION NO.1461 OF 2021

Kunal Vilas Jagtap
Age: 20 years, Occu.: Labourer,
All R/o. of Nimgaon, Tal.Rahata,
Dist.Ahmednagar.

..Applicant
(Orig. accused No.5)

VERSUS

The State of Maharashtra
Through Shirdi Police Station,
Tal.Rahata, Dist.Ahmednagar.

..Respondent

...
WITH
CRIMINAL APPLICATION NO.35 OF 2022
IN BA/1461/2021

...
Advocate for Applicant : Shri Rajendra L. Kute
APP for Respondent State : Shri S.B.Narwade
Advocate for Informant: Shri A.G.Jadhav h/f. Shri R.S.Sadaphule

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CORAM : M.G.SEWLIKAR, J.

DATE: 7th January, 2022

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for enlarging the applicant on bail in connection with Crime No.748 of 2020, registered with Shirdi Police Station, Tal. Rahata, Dist.Ahmednagar, under Sections 302, 120B, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code.
2. The informant is the son of the deceased Ravindra Mali. On

14th November, 2020 at 11:00 p.m., Ajay Vaijinath Bhange, Vishal Ramesh Patil, Ravindra Bansode had threatened the mother of the informant by the name of Bhagyashri Ravindra Mali and had pelted the stones on the shop of the informant and had broken the glasses. On the basis of the report filed by the mother of the informant, NC No.342 of 2020 under Sections 323, 504, 506, 427 of the Indian Penal Code came to be registered.

3. It is further alleged that on 19th November, 2020 at 10:30 p.m., deceased Ravindra Mali and informant were present in the shop named and styled as "Sai Shraddha and Kirana Stores". At that time, accused Ajay Bhange, Ajju Pathan, Vishal Ramesh Patil, Sameer Shaikh, Ravindra Bansode, Kunal Jagtap came there on Motorcycle. Sameer Shaikh, Kunal Jagtap and Ajju Pathan abused the deceased saying as to why NC was registered against their friends. Accused Vishal Ramesh Patil, Ravindra Bansode, Sunil Lokhande, Akshay Shinde, Mahesh Gaikwad and Sameer Shaikh manhandled the deceased. Accused Ajay Bhange caused injury on the neck of the deceased by means of a sharp knife on account of which the deceased sustained bleeding injury. The deceased was shifted to the hospital where he was declared dead.

4. I have heard Shri R.L.Kute, learned counsel for the applicant, Shri S.B.Narwade, learned APP for the respondent-State and Shri A.G.Jadhav, learned counsel holding Shri R.S.Sadaphule, learned counsel for the informant assisting APP.

5. Shri Kute, learned counsel for the applicant submits that a false case is filed against the applicant. The case papers of Shri Saibaba Hospital, Shirdi show that while recording medical history, it is stated that assault was caused by the unknown persons. He further submits that fatal blow was given by the accused Ajay Bhange. Applicant has no role to play in the alleged assault.

6. Shri Narwade, learned APP for the respondent and Shri Jadhav, learned counsel for the informant submit that applicant was present at the scene of the offence. He has past criminal record. Both of them submit that oral dying declaration was given by the deceased to the wife of the deceased and to one Sajjan @ Sanjay Sahebrao Mali i.e. real brother of the deceased. There are statements of the eye-witnesses. Both of them state that the deceased was assaulted by accused Ajay Bhange, and other accused including applicant were there and they were abusing the deceased. Both of them submitted that the

deceased was taken to hospital on Aactiva and Aactiva had blood stains. They submitted that there is *prima-facie* case against the applicant.

7. On perusal of the charge-sheet, it is seen that the deceased was taken to the hospital named and styled as “Shri Saibaba Hospital, Shirdi”. While recording history, it is mentioned that assault caused by unknown persons. This medical history belies the prosecution theory that there was assault by the applicant. The tenor of the FIR indicates that applicant only abused the informant. He did not participate in the assault. Having regard to this, I am inclined to release the applicant on bail. Hence, the order:

ORDER

- i) Bail Application No.1461 of 2021 is allowed.
- ii) Applicant be released on P.R.Bond of Rs.40,000/- (Rs. Fourty Thousand only) with one solvent surety in the like amount in connection with Crime No.748 of 2020, registered with Shirdi Police Station, Tal. Rahata, Dist.Ahmednagar, under Sections 302, 120B, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code and on condition that he shall not enter Nimgaon village till the conclusion of the trial.
- iii) Bail Application No.1461 of 2021 is disposed of.

iv) Criminal Application No.35 of 2022 filed for assist to Public Prosecutor is allowed and disposed of.

v) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**

SPT