

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 612 OF 2022

Jayesh Shivaji Gaikwad ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Aniket Nikam a/w Mr. Ashish Satpute, Mr. Piyush Toshniwal,
Mr.Amit Icham i/by Mr. Vivek Arote, Advocate for the Applicant.

Mr. M.G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 21st OCTOBER, 2022.

PER COURT:

1. This is an application for bail under Section 439 of Cr.P.C. in C.R. No. 527 of 2021 registered with Chandwad Police Station, District Nashik for the offences punishable under Sections 302, 307, 326, 324, 323, 504, 506 r/w Section 34 of Indian Penal Code. The applicant was arrested on 22.09.2021.

2. The case of the prosecution is that, on 22.09.2021, the complainant and her son Sachin Gaikwad and daughter-in-law Varsha Gaikwad were returning home from the agricultural field and Shivaji Gaikwad has tied his bullock on the road proceedings towards their house. The complainant's son said something while looking at the bullock. Shivaji Gaikwad and his son Jayesh

Gaikwad heard his utterances. There was exchange of words. They abused complainant's son. Shivaji and Jayesh ran towards their house. Shivaji returned at the spot with sharp weapon and Jayesh Gaikwad also came there with sickle. Both of them started abusing complainant and her son. They assaulted Sachin Gaikwad with weapons on his head, hands and legs. Sachin had suffered several injuries. They also assaulted the complainant on her hands and the daughter-in-law of the complainant on her head. The family members of the accused also came to the spot and started abusing them. They assaulted the complainant and others by fist and kick blows. They were threatened. Hearing the shouts of complainant and others, Kadu Kashinath Gaikwad, Vrushali Gaikwad, Kashinath Hari Gaikwad, Shubham Kadeshwar Gaikwad came to the spot and intervened in the quarrel. The injured were taken to the hospital for treatment. Sachin Gaikwad was admitted in the hospital. The FIR was registered by complainant Dwarkabai Gaikwad on 22.09.2021 for offences punishable under Sections 326, 324, 323, 504, 506 r/e Section 34 of Indian Penal Code. However, Sachin Gaikwad subsequently died in the hospital and the case was registered under Section 302 of IPC. On completing investigation charge-sheet was filed for offences punishable under Sections 302, 307, 326, 324, 323, 504, 506 r/w Section 34 of IPC.

3. The applicant preferred application for bail before the Sessions Court. The said application was rejected by Order dated 27.01.2022.

4. Learned Advocate for the applicant submitted that the incident had occurred at the spur of moment. There is no intention to commit murder. FIR was initially registered for offence under Section 326 of IPC. Section 302 of IPC is not attracted. The applicant is young boy aged about 20 years. The offence would at the most fall under Section 324 of IPC. The assault took place on 22.09.2021 and the victim died on 26.09.2021. There was no injury on the hands and legs of deceased. The injuries were blunt and two CLW. The applicant is in custody from the date of arrest. Further custody is not required.

5. On a petty quarrel, the accused, who were at logger head with the family of complainant mounted the series of blows with the help of sharp weapon on the complainant, her son and her daughter-in-law. The facts narrated in the FIR would indicate that the applicant and co-accused rushed towards their house and came to the spot of incident with sharp weapons. Both of them assaulted Sachin Gaikwad, Dwarkabai Gaikwad and Varsha Gaikwad. The manner in which the blows were mounted and the nature of injuries suffered by the deceased it would be difficult to accept that

the offence under Section 302 of IPC is not made out. The post mortem reports reveals cause of death of deceased as shock due to injury to vital organs. Column 17 of the report refers to the CLW that left eye-bro having size 3X2X1 c.m. and CLW over frontal region of head having size 5X3X2 c.m. Column 19 also refers to CLW on the forehead to left parietal and temporal region extending up to left ear and CLW over frontal region of head and fracture over frontal temporal and parietal bone of left side of head. Varsha Gaikwad had also suffered contused lacerated wound on left parietal region/head which was grievous and contused lacerated wound on left occipital region of head which is also grievous. Dwarkabai Gaikwad had also suffered CLW on left 7th intercostal space on midclavicular line, CLW on left hand near writ joint and CLW on left hand of index fingure. Learned counsel for applicant tried to contend that some of the injuries were caused by hard and blunt object. The submissions will have to be considered at the time of trial. All the three members of family were assaulted by the accused. Hence, no case for grant of bail is made out.

ORDER

Criminal Bail Application No.612 OF 2022 is rejected.

(PRAKASH D. NAIK, J.)