

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1517 OF 2022

Ashish Dnyaneshwar Gavali

...Applicant

vs.

The State of Maharashtra

...Respondent

**VISHAL
SUBHASH
PAREKAR**

Mr. Aniket Nikam i/b. Amit Icham, for the Applicant
Mr. P.H. Gaikwad, APP, for the State.

Digitally signed by
VISHAL SUBHASH
PAREKAR

Date: 2022.07.13
10:44:49 +0530

CORAM : N. J. JAMADAR, J.

DATE : JULY 08, 2022

P.C.:

1. This is an application for bail under section 439 of Code of Criminal Procedure, 1973.

2. The applicant is arraigned in C.R.No. 565 of 2021 registered with Chikhali police station, Pune for the offences punishable under sections 302, 323, 504 and 506 of Indian Penal Code, 1860.

3. Mr. Manohar Dongare (the deceased) was the father of Sunil Dongare (the first informant). The deceased was a Meson. He was given in to the vice of consuming liquor. The applicant runs a bootleg at Bhim Shakti Nagar slum. The deceased used to frequent the said liquor den and also work there, for which he would get free illicit liquor.

4. On 19th November, 2021, the first informant was informed that the deceased was lying on a footpath abutting Spine Road, near the house of the applicant. The deceased was found in a motionless state. There was bleeding from the back of his head. The deceased was shifted to Y.C.M. Hospital, Pimpri. He was declared dead before admission.

5. It transpired that on the morning of 19th November, 2021 while the deceased and Sharif Shaikh, the witness, were serving illicit liquor to the customers at the applicant's den, the deceased was abusing the customers. The applicant got enraged and assaulted the deceased by fisticuffs and asked the deceased to leave the den if he did not wish to work properly. The deceased left the den. He returned at about 11.30 am while Sharif Shaikh and the applicant were taking bath. The applicant questioned the deceased as to why he returned thereat as he was removed from work. The applicant again assaulted the deceased by fists and pushed him out of the den. While the deceased was leaving the house of the applicant, the applicant picked up a stone lying thereat and gave a blow on the back of the head of the deceased. The deceased went to the adjacent Hanuman temple and slept thereat.

6. Yogesh Kadam, another witness informed the first informant that the deceased was sleeping in the temple with only a towel on his person. The applicant asked the said witness to shift the deceased to the footpath. Thereupon the deceased was shifted to the footpath, where he was found in a motionless state. Hence, the report.

7. The applicant came to be arrested. Postmortem examination revealed that the deceased sustained CLW over left temporal area of size 3 x 2 cm, bone deep and Contusion over occipital area of size 3 x 3 cm, dark red (confirmed on cut section). The medical officer opined that the cause of death was head injury. After usual investigation, charge-sheet has been lodged.

8. The learned counsel for the applicant submitted that the material on record does not indicate that the applicant intended to cause the death of the deceased. Even if the prosecution case is taken as it stands, according to the learned counsel for the applicant, at best, an inference can be drawn that, during the course of altercation, the applicant assaulted the deceased by means of fists and pelted stone on the head of the deceased.

9. In opposition to this, the learned APP would urge that CCTV footages, a panchanama of which came to be recorded on 23rd November, 2021, revealed that the applicant had assaulted the deceased during the period 11.36 am to 11.37 am. After the applicant left the said room, the deceased was also seen leaving the said room. Subsequently, the deceased is seen proceeding towards the Hanuman Temple with a towel on his waist and clothes in his hand. The applicant is also seen following the deceased. Since the stone which was seized from the scene of occurrence had blood stains, at this juncture, it can not be said that there was no intent to cause death of the deceased, urged learned APP.

10. I have carefully perused the report under section 173 of the Code and the documents annexed with it and also given anxious consideration to the submissions canvassed across the bar.

11. To start with, it is pertinent to note that only two injuries namely (1) CLW on the left temporal area and (2) Contusion over occipital area, were noticed by the autopsy surgeon. The deceased died on account of the head injury. Apart from the applicant and the deceased, Sharif Shaikh whose statement was recorded on 21st November, 2021 was the only person who was present at the time of

the alleged occurrence. After narrating the incident which occurred at about 9 am, when the deceased allegedly abused the customers while serving the liquor, Sharif Shaikh states that at about 11.30 am when the deceased returned to the den to have a bath, the applicant questioned him. The applicant started assaulting him by means of fist and tried to push the deceased out of his house. While the deceased was leaving the house of the applicant, the applicant picked up a stone and gave a blow on the back of the head of the deceased. Thereafter, the deceased went towards the temple and slept in the temple.

12. Yogesh Kadam, states that at about 11.30 am, when he came to Hanuman temple, the deceased was sleeping on the platform. Towel was on his waist. The applicant came thereat and asked Yogesh to shift the deceased as devotees would come to pay obeisance. Thereupon, Yogesh and Akash shifted the deceased to the footpath.

13. The aforesaid sequence of events narrated by Sharif Shaikh and Yogesh kadam, prima facie, indicates that an altercation had ensued over the alleged conduct of the deceased in abusing the customers of the applicant. The applicant allegedly assaulted the

deceased by means of fists when the deceased came to have bath in the house of the applicant. It is not the case that at that point of time, the applicant was armed with any weapon. Sharif Shaikh states that while the deceased was leaving the house of the applicant, the later picked up a stone lying thereat, and gave blow on the head of the deceased from back side. It would be contextually relevant to note that autopsy surgeon examined a triangular rock weighing 843 gms. and opined that the injuries noted on the person of the deceased were possible by the said rock. The investigating officer claimed to have recovered the said rock from the scene of occurrence under the scene of occurrence panchanama on 21st November, 2021.

14. In the aforesaid backdrop, two factors assume importance. First, after the applicant pelted stone on the deceased, the later went ahead towards the temple and slept in the temple. Two, it is not the case of the witnesses that when the deceased was shifted from the temple to the footpath, they had noticed any blood oozing from the head injury. In this view of the matter, prima facie, the question is as to whether the applicant intended to cause an injury which was sufficient in the ordinary course of nature to cause death is a matter which warrants consideration. In the circumstances of

the case, pelting a small stone from behind, which went on to hit the deceased on the head, prima facie, does not appear to have been animated with intent to cause the death of the deceased.

15. Investigation is complete for all intent and purpose. Incriminating articles, including the alleged weapon of offence, have been seized. Further detention of the applicant does not seem warranted from the point of investigation.

16. The apprehension on the part of the prosecution of threatening the prosecution witnesses and tampering with evidence, in the backdrop of the nature of avocation which the applicant was carrying and the relative position of the witnesses, can not be said to be unfounded. However, it can be taken care of by imposing conditions. Therefore, it would be expedient to impose stringent conditions to address the said apprehension.

17. The upshot of aforesaid consideration is that, the applicant deserves to be enlarged on bail.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Ashish Dnyaneshwar Gavali be released on bail in C.R.No. 565 of 2021 registered with Chikhali police station, Pune on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.
- 3] The applicant shall attend Chikhali police station on first Monday of every month in between 10 am to 11 am for a period of two years or till framing of the charge whichever is earlier.
- 4] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 5] The applicant shall not enter the limits of Chikhali police station for a period of one year without prior permission of the Court of Session except for the purpose of marking his presence at Chikhali police station.

(N. J. JAMADAR, J.)