

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

BAIL APPLICATION NO. 2710 OF 2021

Madhukar Gangaram Raul

...Applicant

Versus

The State of Maharashtra

...Respondent

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Ms.Avanti Inamdar i/b. Mr. Rameshwar N. Gite for the
Applicant.

Mrs.PPShinde, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 20TH DECEMBER, 2021

PRONOUNCED ON : 28TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 13 of 2021 registered with Surgana Police Station, District- Nashik for the offence punishable under Section 302 of the Indian Penal Code (the IPC).

2. Informant is younger brother of deceased, namely, Rajendra Dhavalu Bagul.

3. On 28th February, 2021, there was a marriage ceremony of the son of one Madhukar Navji Palvi in the village. Informant along with others had been to witness the marriage procession. Deceased was also there.

4. On 1st March, 2021 at about 9.30 pm., informant was summoned by his friend at Roti Phata. When he reached there, he found deceased was lying dead having various injuries on his person. Informant accordingly lodged the First Information Report (FIR) against unknown person.

5. During the course of investigation, it revealed that the applicant on account of quarrel and over consumption of liquor in the said marriage procession had a quarrel with deceased in which he assaulted deceased by means of a stone on his head and killed him. The said incident was witnessed by Motiram Zambru Pawar and Nivrutti Motiram Gavali. Accordingly, the applicant came to be arrested.

6. Ms.Inamdar, learned Counsel for the applicant, submits that the so called statements of witnesses relied on by the prosecution are vague and the chronology of events given by them does not match with each other. Moreover, the investigating is over and charge-sheet has been filed. No purpose would be served by keeping the applicant behind the bars. Hence, the applicant may be enlarged on bail, argued learned Counsel.

7. Mrs.Shinde, learned APP, on the other hand, opposes the submissions by contending that there are statements of eye witnesses, namely, Motiram Zambru Pawar and Nivrutti Motiram Gavali, who have specifically stated in their respective statements about the role played by applicant. Since the deceased was assaulted by means of a stone on his head, the cause of death is given in the postmortem report is death due to head injury. Besides, there is recovery of clothes which the applicant was wearing at the time of incident under Section 27 of the Evidence Act. There being on merit in the application, same is liable to be rejected.

8. Perused investigation papers.
9. The statements of two witnesses, namely, Motiram Zambru Pawar and Nivrutti Motiram Gavali are crucial.
10. Motiram Zambru Pawar in his statement states that in the night of incident, a quarrel had taken place between deceased and applicant over liquor and in which the applicant slapped deceased and thereafter lifted a big stone and hit on the head of the deceased. He did not stop there and again lifted a small stone and again hit the deceased. Similar is the statement of Nivrutti Motiram Gavali.
11. I have also gone through the findings of postmortem report which shows that depressed fracture of skull on left side was noted along with other injuries. The opinion as to probable cause of death given by the concerned Medical Officer is “Head Injury”.

12. In the light of statements of above named witnesses and as also the finding of postmortem report, it is more than clear that it was the applicant who had assaulted deceased by means of stones. The evidence on record is overwhelming.

13. In view of above, I do not find merit in the application. Hence, the following order :

ORDER

Bail Application is rejected.

(V.G.BISHT, J.)