

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

BAIL APPLICATION NO. 4492 OF 2021

Nitin Sampat Rode

...Applicant

Versus

State of Maharashtra

...Respondent

**SANTOSH
SUBHASH
KULKARNI**

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Mr. Pratik Kalantri, for the Applicant.

Mr. A. A. Palkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 22nd JUNE, 2022

PRONOUNCED ON: 29th JUNE, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.64 of 2021, registered with Sinnar MIDC Police Station, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

2. Pratibha Ugle (the first informant) resides at Gulvanch Road, Taluka Sinnar, District Nashik. Her husband, Sanjay Ugle (the deceased) was given in to the vice of consuming liquor. Under the influence of liquor, the deceased used to rake up quarrels with informant, frequently. Fed up with the behaviour of the deceased and frequent quarrels, the first

informant had gone to her parental home. As the school of her son Swastik had started, the first informant returned to her home at Bargaon Pimpri.

3. On 17th February, 2021 at about 4.00 pm. the deceased came home under the influence of intoxicant. The deceased raked up quarrel with the first informant and hurled abuses. The first informant called her cousin Nitin Rode, the applicant. The applicant came to the house of the first informant and tried to reason with the deceased. The latter paid no heed. As an altercation ensued, the applicant called his brother Nilesh, the co-accused. They both again tried to reason with the deceased. As the deceased did not behave himself and continued to behave in a disorderly manner, there was an altercation followed by a scuffle. Co-accused Nilesh caught hold up the deceased, the applicant picked up a wooden log, lying thereat. The applicant gave blows by means of the wooden log on the head and left eyebrow of the deceased. The later fell down. He was taken inside and made to lie on the floor. After a while, the applicant came thereat along with a Tempo and shifted the deceased to Sinnar Municipal Hospital. Upon examination, deceased was declared dead. Hence, the first informant lodged the report.

4. The applicant came to be arrested along with co-accused. Post completion of investigation charge-sheet has been lodged.

5. By an order dated 4th October, 2021, in Bail Application No.2450 of 2021, this Court was persuaded to release the co-accused Nilesh on bail.

6. The applicant has preferred this application for bail with the assertions that there was no intention to cause the death of the deceased. The applicant was not armed with any weapon. There was no premeditation. The incident occurred at the spur of moment, as held by this Court while releasing the co-accused Nilesh on bail. At best, the act of the applicant may amount to an offence punishable under Section 304 part II of the Penal Code. Hence, the applicant be enlarged on bail.

7. I have heard Mr. Kalantri, the learned Counsel for the applicant and Mr. Palkar, the learned APP for the State, at some length. With the assistance of the learned Counsels, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973, and the documents annexed with it.

8. There is not much controversy over the basic facts. The relationship between the parties is, by and large, indisputable. From the perusal of the statements of the first informant as well as Asha Ugle; sister-in-law of the deceased, and Mhadu Sakharam Ugle; father of the deceased, who reside adjacent to the house of the first informant, it appears that the deceased was given in to the vice of consuming liquor and there were frequent quarrels between the deceased and the first informant. The fact that the first informant had called the applicant and the co-accused, who are her cousins, as on the date of the occurrence the deceased had again raked up quarrel with the first informant, is stated to by the sister-in-law and father of the deceased as well.

9. On the core of the occurrence, the first informant as well as the above-named witnesses, *prima facie*, seem to be in unison on the point that the applicant and the co-accused tried to reason with the deceased and altercation ensued and the deceased was assaulted by the applicant and the co-accused. The sister-in-law and the father of the deceased, however, assert that they raised alarms and asked the applicant and co-accused not to beat the deceased.

10. It would be contextually relevant to note that the Autopsy Surgeon opined that death was caused due to intracranial hemorrhage due to head injury due to blunt trauma. The Autopsy Surgeon noted two contusions over the forehead and left parieto temporal region. In addition, there was a CLW over little finger and abrasions over rest of the body.

11. In the light of the aforesaid material, the learned Counsel for the applicant submitted that there was no intention to cause death of the deceased. The applicant was initially unarmed and allegedly the applicant picked up the wooden log, which was lying thereat, and assaulted the deceased in a heat of passion. There are no antecedents. Hence, the applicant deserves the exercise of discretion in his favour.

12. In opposition to this, the learned APP, laying emphasis on the multiple injuries found on the person of the deceased, submitted that it is not a case of single blow. As many as 10 injuries were found on the person of the deceased. Therefore, it cannot be said that the applicant had no intention to cause death.

13. The aforesaid submissions deserve consideration in the light of the attendant circumstances. *Prima facie*, it appears

that, there were quarrels between the first informant and the deceased on account of consumption of liquor by the deceased. The applicant and co-accused had come to the house of the deceased to resolve one of such quarrels and persuade the deceased. It is not the case that the applicant was initially armed. The witnesses stated that the applicant picked a wooden log lying thereat, after the scuffle broke out. It is true that two contusions were found on the head of the deceased. However, in the totality of the circumstances, *prima facie*, intent to cause death cannot be inferred from those two injuries only.

14. The first informant and the witnesses, including the sister-in-law and the father of the applicant, have consistently stated that the deceased was initially taken inside the room by the applicant and the co-accused and, later on, the applicant himself brought a Tempo and took the deceased to Sinnar Municipal Hospital. This contemporaneous conduct of the applicant becomes relevant and deserves adequate consideration.

15. The learned Counsel for the applicant placed reliance on the observations of Supreme Court in the case of

Pulicherla Nagaraju alias Nagaraja Reddy vs. State of A. P.¹,

wherein the Supreme Court adverted to the factors which may bear upon the determination of the question as to whether the fact of causing death in a given case, falls within the ambit of Section 302 or 304 Part I or 304 Part II.

16. Paragraph 29 reads as under:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of

1 (2006) 11 Supreme Court Cases 444.

circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

17. Reverting to the facts of the case, on the touchstone of the factors adverted to above, *prima facie*, it appears that it would be difficult to draw an inference that the applicant had the intention to cause death of the deceased.

18. While releasing the co-accused Nilesh on bail, this Court had, *inter alia*, observed that the incident appeared to have taken place at the spur of moment and *prima facie* it appears that the applicant had no motive to kill the deceased.

19. The aforesaid observations, if construed in correct perspective, in juxtaposition with the facts of the case, equally govern the case of the applicant as well.

20. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. The applicant appears to have roots in society. Possibility of fleeing away from justice, therefore, seems remote.

21. I am, therefore, persuaded to exercise the discretion in favour of the applicant. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.

(ii) The applicant be released on bail on furnishing a P. R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount.

(iii) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]