

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

BAIL APPLICATION NO.416 OF 2023

**VIRSING BHAJAYA VASAVE
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr. Tousif Shaikh a/w. Mr. Shaikh Samir
Ahmad Saifuddin

APP for Respondent/State : Mr. K.S. Patil

...

CORAM : S.G. MEHARE, J.

DATED : MARCH 29, 2023

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The FIR was lodged by the wife of the deceased alleging that one Vikram and the applicant were abusing the deceased and then the applicant picked up the stone lying on the spot and hit on the head of the deceased. The wife of the deceased claimed to be the eye witness. However in her statement under Section 164 of Cr.PC., she stated that one Kapila a minor girl child told her about the incident. She also exonerated Vikram who was allegedly abusing the deceased. Then he was made a witness. He stated that he separated the quarrel but the applicant assaulted the deceased with a stone on the head of deceased. That time, the brother of the deceased Hemant

and uncle Raising and others came there. Thereafter, the applicant flee away from the spot.

3. Learned counsel for the applicant would argue that there is inconsistency in the statement of the alleged eye witness. The so-called eye witness did not state that she witnessed the incident. Therefore, such inconsistent statement cannot be believed. The deceased must have fallen on a stone lying on the spot of the incident. He was arrested a day after registering the crime. In such circumstances, he deserve bail.

4. Learned APP would submit that each and every witness shows the presence of the applicant on the spot of the incident. He was quarreling with the deceased. The quarrel turned into assault. Therefore, such an inconsistent statement would not give the benefit to the accused for bail. The prosecution case is supported with the medical evidence. The offence is serious. Hence, he may not be granted bail.

5. It appears that there is material inconsistencies as regards witnessing the incident and assault. One of the co-accused Vikram was subsequently exonerated and turned witness to the incident. The material infirmities may be helpful to the applicant for getting bail. For the above reasons, the application deserve to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Virsing Bhajaya Vasave, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.85 of 2022, registered with Molgi Police Station, Taluka Akkalkuwa, District Nandurbar for the offence punishable under Section 302, 323, 504 of the Indian Penal Code, on the conditions that he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall not enter the village Bejaripati, Taluka Akkalkuwa, District Nandurbar for six months from the date of his release.

(S.G. MEHARE, J.)