

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

936 BAIL APPLICATION NO.1142 OF 2023
WITH APPLN/2593/2023 IN BA/1142/2023

ARUN BARIKRAO BIKKAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Deshmukh Vivekanand B.
APP for Respondent-State : Mr. S. P. Deshmukh.
Advocate for Complainant to assist APP : Mr. Ambildhage G. A.

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CORAM : S. G. MEHARE, J.
DATE : 27.07.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the complainant.
2. The applicant is seeking bail in Crime No.213 of 2023, registered with Pathari Police Station, District Parbhani, for the offence punishable under Sections 304, 324, 504, 506 read with Section 34 of the IPC.
3. The applicant, injured and deceased have the adjoining fields. They had the dispute over the boundary marks of their fields. On the day of the incident, the quarrel took place. It has been alleged against the applicant that he raised the screw bar

to assault the deceased. The deceased due to fear fell down and, died on 28.05.2023. The Post Mortem report of the deceased reveals that he had injuries over right and left side of frontal areas of head measuring 2.5 x 1.8 c.m. On the basis of the Post Mortem information, the Medical Officer opined that the cause of death was “Intra Cerebral Haemorrhage”.

4. Learned counsel for the applicant would submit that there was no actual assault as alleged at the hands of the applicant. It was a free fight. Hence, the deceased fell down and suffered the injuries to his head. The applicant infact has not played any active role. The family members of the applicant were arraigned as accused in a false crime. The screw bar allegedly used in the crime has been seized and nothing is to be investigated from the applicant. There were no antecedents to the discredit of the applicant. Hence, he may be granted bail.

5. Per contra, learned APP and learned counsel for the complainant opposed the application. They have contended that the offence is serious. The investigation is in progress. Hence, he may not be granted bail.

6. Learned counsel for the victim would argue that it was a cold blooded and well planned murder. Looking to the injuries

mentioned in column No.17 of the Post Mortem Report, it cannot be opined that the cause of death is “Intra Cerebral Haemorrhage”. It was a murder. A deadly weapon was used by the applicant. The co-accused, who have been released on bail have threatened the first informant. The applicant may also threaten the witnesses. The investigation is in progress. Offence for the murder of the deceased may be registered. Hence, considering the gravity of the offence, the applicant may not be released on bail.

7. The allegations levelled against the applicant itself reveals that he actually did not assault the deceased with the screw bar. When he was about to hit, suddenly the deceased fell down and became unconscious. He was taken to the hospital and died on third day of the incident. The Court has to consider the material placed before it and not the possible future effect. *Prima facie*, opinion of the Medical Officer has to be considered. The first informant himself alleged that when the applicant raised the screw bar to assault the deceased, due to fear he fell down. In the circumstances, what offence is made out may be considered in future, but *prima facie* it must be believed that he did not assault the deceased by the said screw bar. The FIR reveals that the incident happened in the

field as there was a dispute over the boundary. So, it is impossible to believe that it was a cold blooded and well planned murder. As far as the N.C. registered against the co-accused is concerned, the applicant may not have concern with the said threats. The possibility of creating a ground to oppose the application by lodging the N.C.s against the accused can also not ruled out. Now-a-days, it is experienced that after granting the bail, many times such non-cognizable reports are filed against the accused and the applications for cancellation of bail have been filed in the Court. Be that as it may, considering the role attributed to the applicant and recovery of the so called screw bar in the crime, the Court is of the view that this is not a fit case to decline the bail. Hence, on certain conditions, he may be released on bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **ARUN BARIKRAO BIKKAD** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, in Crime No.213 of 2023, registered with Pathari Police Station, District

Parbhani, for the offence punishable under Sections 304, 324, 504, 506 read with Section 34 of the IPC, on the following conditions :

- (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) He shall attend the Police Station as and when called by the Investigating Officer on written notice till conclusion of the trial.
 - (c) He shall stay away from village Pathari District Parbharni for three months from the date of his release.
- (iii) Criminal application No.2593 of 2023 to assist the learned APP is allowed.

(S. G. MEHARE, J.)

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vmk/-