

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

BAIL APPLICATION NO.1164 OF 2023

**HEMANT @ HEMANTKUMAR GOVINDRA GANDLE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicants : Mr. P. D. Digraskar h/f Mr. J. V. Khandagale
APP for Respondent: Mr. K. S. Patil

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CORAM : S. G. MEHARE, J.

DATE : 17.08.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent State.
2. The applicant seeks bail in Crime No. 418 of 2022 registered with Sailu Police Station, District Parbhani for the offences punishable under Section 302 of the Indian Penal Code.
3. The learned counsel for the applicant would submit that it was a sudden fight. There was no premeditation and the accused did not take undue advantage or acted in a cruel or unusual manner. He did not deny that there were eyewitnesses to the incident. However, he was trying to convince the Court that it was not an offense of murder but it is a case falling under exception 4 of Section 300 of the Indian

Penal Code.

4. To buttress his argument he relied on the case of *Stalin Versus State ,Represented by the Inspector of Police (2020)*⁹ *Supreme Court Cases 524*. He has also argued that the applicant was the waiter. Hence, a cutter used to be with him. Therefore, it cannot be said it was an act with premeditation. There was single injury. It was also not serious. The deceased immediately covered the injury with his hand and directly went to the hospital. When he was taken to the higher medical center, he died. Appreciating the material against the applicant, he would submit that the applicant deserves bail.

5. Per contra, the learned A.P.P. would submit that, there are eyewitnesses to the incident. The quarrel took place at the instance of applicant. He was asking the deceased to administer him liquor. When the deceased denied, he suddenly took a cutter from his pocket and assaulted on his neck. The cause of death was cutting injury to the neck. There are no circumstance to believe that it was an act without premeditation, in a sudden fight and the applicant did not take undue advantage or acted in cruel or unusual manner. It is a serious offence. The applicant was well aware that causing injury by such a deadly sharp weapon would cause the death in ordinary course

of nature. Hence the applicant does not deserve bail.

6. Admittedly there were eyewitnesses to the incident. The cutter used in the crime was also recovered at the instance of the applicant. The facts of the case reveal that the applicant was the author raising quarrel, when the deceased denied to administer him liquor. As far as the exception 4 of Section 300 of the Indian Penal Code is concerned, the Hon'ble Apex Court in the case of *Stalin Versus State* (cited supra) has referred to the ratio laid down in the case of *Dhirajbhai Gorakhbhai Nayak Versus State of Gujarat (2003) 9 SCC 322* in which it has been observed that " sudden fight" implies mutual provocation and blows on each side. The applicant did not suffer a single injury or there is no case as such. It has been further held that " The help of Exception 4 can be invoked if death is caused(a) without premeditation (b) in a sudden fight (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner and (d) the fight must have been with the person killed ".

7. There is no material to believe that there was a provocation and blows on each side. It was not a sudden fight but a quarrel that was raised by the applicant. The applicant took undue advantage and acted in cruel and unusual manner only for the reason that the

deceased did not administer him liquor on his demand. Considering the material against the applicant, it is difficult to believe at this juncture that the case falls under exception 4 of 300 of the Indian Penal Code. The offence is serious.

8. For the above reasons the application stands dismissed.

(S. G. MEHARE)
JUDGE

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