

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

BAIL APPLICATION NO. 1584 OF 2023

Bhim @ Bhim s/o Narsappa Khawade
Age: 49 years, Occu: Agri.,
R/o: Thoralewadi, Tq. Omerga,
Dist. Osmanabad

... Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Omerga Police Station
Tq. Omerga, Dist. Osmanabad

... Respondent

...

Mr. S. S. Gangakhedkar, Advocate for the Applicant
Mr. K. S. Patil, APP for the Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 03.10.2023

PER COURT :

1. Heard the learned Advocate for the applicant and learned APP for the respondent/State.
2. By this application, the applicant seeks regular bail in connection with Crime No.22/2021 registered with Omerga Police Station District Osmanabad for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 326, 506 and 188 of the Indian Penal Code [for short 'IPC'].
3. The investigation was set in motion on the basis of information given by one Balaji Gundappa Misale. In nutshell, it is alleged that, on

10/01/2021, initially, there was some quarrel between Mahadeo Khavade, Raiappa Khavade, who assaulted Govind by stick and axe. The second part of the incident took place near Anganwadi when the accused – Mahadev Khavade and Raiappa Khavade called other companions and owing to old dispute regarding the plot, the victim - Hanmant was assaulted by the accused persons. It is alleged that, the applicant made assault on victim – Hanmant by an axe on his leg, whereas, accused – Limbaji Chandkapure hit on his head by the axe. The other accused persons assaulted the victim by fist and kick blows. The investigation progressed on the basis of the said report. The applicant – accused has been arrested on 19/06/2023. His bail application is rejected by the Sessions Court vide order dated 19/08/2023.

4. Mr. Gangakhedkar, learned Advocate appearing for the applicant would submit that the genesis of prosecution case itself is doubtful. He would point out that, main role is attributed in the FIR against the accused – Limbaji Venkat Chandkapure. However, he is released on bail with observation that his presence was seen elsewhere at the time of incident and documents to that effect are made part of charge-sheet. He would further submit that, even as per the post mortem report, cause of death is a head injury. The applicant is attributed to have caused injury on the leg of the victim. He would therefore urge that the applicant be released on bail.
5. Learned APP strongly opposes the prayer for grant of bail. He would submit that the applicant is specifically named in the FIR. He was holding the axe in his hand and gave a blow on the leg of the victim. He would submit that even eye witnesses have named the applicant to be the assailant. He would submit that conduct of the applicant is material. He was absconding since the date of registration of offence

and when the learned Sessions Court initiated the action under Sections 82 and 83 of Cr.P.C to declare him absconding and seizure of the property, the applicant surrendered. In that view of the matter, the applicant is not entitled for discretionary relief of grant of bail.

6. Having considered the submissions advanced, it is apparent that, the FIR dated 10/01/2021 has been registered on the information given by Balaji Gundappa Misale. It stipulates specific role against the accused - Limbaji as well as the present applicant. The accused – Limbaji is attributed the role of inflicting the injury on the head of the victim using the axe. The applicant is attributed with assault on the leg of victim. The post mortem report clearly spell-out the cause of death as head injury. Pertinently, during the investigation, material is collected, which indicate that, the accused – Limbaji was not on the spot. Therefore, the learned Sessions Judge released him on bail referring to such evidence. *Prima facie*, the genesis of the prosecution case is shaken in view of the contradictory evidence on record.

7. Although the applicant is named in the FIR, two ladies, who are cited as an eye witnesses of the incident, namely, Tangema Misale and Kavita Mekale, do not whisper about the presence of applicant on the spot. In that view of the matter, *prima facie*, it is difficult to accept the case of the prosecution as it is. So far as the conduct of the applicant is concerned, it is true that, he was not arrested immediately and certain steps were taken against him after filing of charge-sheet in terms of Section 83 of Cr.P.C., however, that itself cannot be the ground to refuse the bail to the applicant when on consideration of the merit, he made out case for release on bail subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.

- (ii)** The applicant, namely, Bhim @ Bhim s/o Narsappa Khawade be released on bail in connection with Crime No.22/2021 registered with Omerga Police Station District Osmanabad for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 326, 506 and 188 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand only) on the following conditions:
- (a)** The applicant shall not tamper with the prosecution evidence/witnesses in any manner.
 - (b)** He shall attend each and every effective dates before the Trial Court.
 - (c)** He shall furnish the details of his residential address along with Aadhar Card and also residential address with contact numbers of two close relatives with the Sessions Court.
 - (d)** He shall not leave the State of Maharashtra without prior intimation to the Sessions Court.
- (iii)** Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE