

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

28 BAIL APPLICATION NO.2033 OF 2022

RUMA UTARYA TADAVI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Jain Gajendra Devichand.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 02.01.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. It has been alleged against the applicant that he has to recover Rs.8,000/- from the deceased towards the construction of his house. Thereafter, the same allegations were levelled before a week of the incident. The prosecution has eye witness, who is the nephew of the applicant. He stated that he saw the applicant assaulting the deceased with iron rod. That apart, the prosecution also relied upon the theory of last seen together.
3. The alleged incident happened on 06.07.2022. As per the FIR, the deceased left his home at 10.00 a.m. Then, the eye

witness allegedly witnessed the incident at about 5.00 p.m. from his house. The report was lodged on 07.07.2022 at 7.00 p.m. alleging that it was an accidental death. On the very same day, the applicant has been arrested.

4. Learned counsel for the applicant would submit that the alleged allegations that the applicant was demanding his dues to the deceased long back does not constitute the offence. The report has not been lodged immediately. The eye witness is concocted. His conduct is suspicious. He did not tried to save the deceased who was his maternal uncle nor he immediately informed the family of the deceased about the assault at the hands of the applicant. His statement is recorded after the arrest of the applicant. He would submit that the applicant has been arrested on suspicion. The deceased was addicted to liquor. Therefore, possibility of felling on the stone available near the dead body and causing death cannot be ruled out. He would refer to the spot panchnama and point out that the spot of incident smelled of liquor. He would also argue that the injuries mentioned in column No.17 of the Post Mortem Report does not support the prosecution case that half kgs stone was used to assault on the head of the deceased. The deceased has mere abrasion over his forehead. Therefore, the evidence

collected against the applicant does not *prima facie* reveal the applicant's involvement in the alleged incident.

5. Learned APP has strongly opposed the application. He would argue that the eye witness is cousin nephew of the applicant. He has no reason to lie against his uncle. His statement was immediately recorded on second day of the alleged incident. The circumstantial evidence is available against the applicant. Hence, he may not be granted bail.

6. Perusal of the Post Mortem Report reveals that there were no signs of injuries over the head of the deceased that may be caused by hitting the stone of half kg, which was recovered from the spot of the incident. The eye witness deposed that he saw the applicant assaulting with iron rod. The Post Mortem Report does not reveal the injuries that may be caused due to the iron rod. The evidence collected against the applicant appears to be not *prima facie* supporting the prosecution case. The applicant was demanding the money for his work. Therefore, it cannot be said to be an intention to kill. The overall material reveals that the applicant has *prima facie* case for bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

- (ii) Applicant **RUMA UTARYA TADAVI** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.189 of 2022, registered by Police Station Dhadgaon, District Nandurbar, for the offences punishable under Sections 302, 323 and 504 of the IPC, on the condition not to tamper with the prosecution witnesses.

(S. G. MEHARE, J.)

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vmk/-