

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

**BAIL APPLICATION NO. 1879 OF 2023
DEEPAK GUNWANT SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA.**

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Mr. Satej S. Jadhav, Advocate for applicant.
Mr. K.S. Patil, APP for respondent.

**CORAM : S.G. CHAPALGAONKAR, J.
RESERVED ON : 30th October, 2023
PRONOUNCED ON : 1st November, 2023.**

ORDER :-

The applicant seeks regular bail in connection with crime No.145 of 2023 dated 9th May 2023 registered with police station Nilanga, District Latur, for the offences punishable under sections 307, 302, 324, 323, 504, 506 r/w 34 of IPC

2. The investigation was set in motion on the basis of information given by Keshav Digambar Gaikwad, wherein, it is alleged that on 8.5.2023, in the evening, at about 6.30 p.m. his brother Madhav, informed that Deepak Suryawanshi had a quarrel with him on account of parking of motorcycle and on that count Deepak beat him by fists and kick blows. Thereafter, the informant alongwith his family members had been to the house of Deepak Suryawanshi and asked him as to why he has beaten Madhav. At that time, accused Deepak, Bahurao and Anita came out of house and hurled abuses. Accused Deepak raised attack with wooden log on Madhav and gave a blow on back side of the head. Accused Baburao Suryawanshi gave blows of stick on the chest and stomach of Madhav, whereas, accused Anita gave blows of fists and kick to him. The quarrel was separated by Balaji Gaikwad and others. On

account of said attack, Madhav had suffered serious injuries. He was initially treated at Civil Hospital, Nilanga, then referred to Civil Hospital at Latur. On the basis of aforesaid information, initially, crime No. 145 of 2023 had been registered for the offence punishable under Sections 307, 324, 323, 504 r/w. 34 of IPC against in all 3 accused persons, including present applicant Deepak and Baburao Suryawanshi.

3. The investigation progressed in the matter. Amol Gaikwad, the alleged eye witness, in his police statement under Section 161 of Cr.PC. stated that accused Baburao Suryawanshi was not present on the spot. However, under misconception, his name was recorded as assailant in the FIR. After conclusion of the investigation, charge sheet came to be filed only against applicant Deepak Suryawanshi and his mother Anita Suryawanshi. Charge sheet specifically notes that during the course of investigation, no evidence was found against Baburao Suryawanshi. Hence, he is not charge-sheeted. The applicant has been arrested on 9.5.2023. Since then he is behind bars. His plea for grant of bail has been rejected by the Sessions Court vide order dated 16.9.2023.

4. Mr. Satej Jadhav, learned advocate for the applicant vehemently submits that the genesis of the prosecution story itself is doubtful. He would point out that the FIR names 3 accused persons as assailants, which includes Baburao Gunwant Suryawanshi. Specific role was attributed against him that he was holding stick in his hand and inflicted blows on the chest and stomach of Madhav Gaikwad. However, during the course of investigation, it was revealed that he was neither present on the spot nor played any role in assault. As such, charge sheet came to be filed against two accused persons including the applicant.

The learned advocate for the applicant would further submit that narration in the FIR suggests that applicant Deepak inflicted blow of stick on the back side of Madhav's head. By inviting attention of this Court to the surface wounds and injuries depicted in Column No. 17 of the Post Mortem report, he would urge that a sutured wound was noted on the frontal region of the skull of victim which is inconsistent with the attributions against the applicant. He would submit that even assuming the complicity of the applicant in commission of the offence, it is a case of single blow. There is no intention to kill. The applicant is a young boy having no criminal antecedents. Hence, he urges to release him on bail.

5. Learned APP, on the other hand, strongly opposes the prayer for grant of bail. He would submit that, applicant is specifically named in the FIR with specific role in commission of offence. He is responsible for the head injury by deceased. The post mortem report suggests the cause of death to be head injury. There is recovery of incriminating article i.e. stick from the spot. The eye witnesses have named the applicant to be the main assailant. As such, he urges to reject the application.

6. Having considered the submissions advanced and on perusal of the material in charge sheet, it is evident that deceased Madhav lost his life on account of head injury. The FIR suggests that applicant was the assailant and inflicted a blow of stick on back side of head of the victim – Madhav. However, perusal of the post mortem notes, particularly, Column No.17, shows only one injury on the frontal region of the skull. As rightly pointed out by the learned advocate for the applicant, there is material inconsistency in the ocular evidence and the

medical evidence tendered into service. The FIR attributes accused Baburao Suryawanshi as one of the assailants having active participation in the commission of offence. It is specifically alleged in FIR that he was holding a stick in hand and raised blows on stomach and chest of victim Madhav. However, the external injuries indicated in Column No.17 of the post mortem notes, suggests different site of the injuries suffered by the victim. Pertinently, some of the eye witnesses, particularly, Amol @ Amar Balaji Gaikwas states that allegations against Baburao are wrongly made while recording FIR. During investigation, it is revealed that Baburao was not present on the spot of incident nor he participated in the commission of offence. As rightly urged by Mr. Jadhav, the genesis of the prosecution story stand shaken to certain extent. However, all these aspects are to be scrutinized during the trial.

7. While considering the plea for grant of bail, this court will look into the nature of the allegations and prima facie material showing complicity of the applicant in the commission of offence. Similarly, this court would consider other factors like seriousness of the offence and role attributed against the applicant.

8. As observed above, the genesis of the prosecution story appears to have received jolt when one of the main assailants alleged in the FIR was found to be absent on the spot of incident. Further, there is contradiction as regards to the site of the assault at the hands of the applicant. The deceased suffered single blow of stick on his head. Even assuming that the applicant is the author of such injury, it is difficult to draw inference of any intention to kill since the dispute arose on account of trifle cause of parking of the motorcycle. The victim and his family

members went together to the house of the applicant where a sudden quarrel took place resulting into the scuffle, which is suggestive of the fact that the incident took place on the spur of moment without pre-meditation or intention to cause death.

9. The applicant is aged about 19 years. Learned APP confirmed that there are no criminal antecedents against him. He is behind bars for last 5 months. Hence, a case is made out for grant of bail, however, subject to certain conditions.

10. **ORDER**

- (i) The Bail application is allowed.
- (ii) Applicant – Deepak Gunwant Suryawanshi, be released on bail on furnishing PB. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in connection with Crime No. 145 of 2023 registered with Police Station Nilanga, Dist. Latur, for the offences punishable under Sections 307, 302, 324, 323, 504 and 506 r/w. 34 of IPC on the following conditions :-
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall not enter village Dadgi, Taluka Nilanga, Dist. Latur till conclusion of trial in the present case.
 - (c) He shall not tamper with the prosecution evidence.
 - (d) He shall not indulge in any criminal activity.
- (iii) Application stands disposed of accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-