

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

**BAIL APPLICATION NO.2127 OF 2022
WITH APPLN/118/2023 IN BA/2127/2022**

**JEEVAN @ JIVAN SANJAY GATKAL
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Ostwal Abhaykumar Dilip
APP for Respondent/State : Mr. K.S. Patil
Advocate for Complainant : Mr. C.V. Bodkhe a/w Mr. R.V. Gore

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CORAM : S.G. MEHARE, J.

DATED : JANUARY 10, 2023

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.
2. The complainant and accused are the residents of the same locality. The deceased was assaulted as he was staring at the wife of the present applicant and demanding her phone number. Previously he was explained, but he did not listen. He continued to harass the wife of the applicant; hence, she had lodged the report against the deceased. Since the deceased was not listening and continued to harass her, the applicant assaulted the deceased with iron rod. The applicants did not deny the incident. However, they came with a case that since the deceased was continuously harassing the wife of the present applicant, they went to teach him a lesson and

in the heat of passion, the deceased was assaulted and suffered the injury.

3. The applicant's counsel would also argue that the recovery of the weapon is inadmissible for the reason that it was simultaneously recovered and two accused produced the same weapon. To bolster his arguments, he relied on the case of Mohd. Abdul Hafeez Vs. State of Andhra Pradesh, (1983) 1 SCC 143. The applicant has also claimed the bail on the ground of parity as the co-accused have also allegedly assaulted the deceased with similar weapon on head. He is ready to abide by the conditions to stay away from the village until conclusion of the trial.

4. Learned APP and learned counsel appearing for the complainant have vehemently opposed the application. They would submit that there were eye witnesses to the incident. The applicant was aggressive. He is the main culprit. The way they have adopted to teach the lesson was against the law. They had other remedy to take the actions, if any, against the deceased for harassing the wife of the applicant. The applicant and the witnesses are the residents of the same village. Therefore, there may be a great possibility of tampering with the prosecution witnesses. It has also been argued that the charge has been framed and the trial has been commenced.

5. Learned counsel for the complainant referred to one photograph claiming that the applicant was assaulting the deceased.

However, this photograph reveals that a person was lying on the ground and two persons were holding the weapons like stick/rod.

6. Perused the papers. The applicant did not deny the incident. He has a case that since the deceased was continuously harassing his wife though he was explained, the deceased was assaulted. The quarrel took place, and in that quarrel, the deceased received the injuries on head and he died. Similarly situated co-accused have been released on bail. What was the intention in committing the crime is a matter of trial. Since the deceased was harassing his wife; such a drastic step has been taken. The investigation has been completed. There are no antecedents to the discredit of the applicant. Hence, he may be granted bail on certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Jeevan @ Jivan Sanjay Gatkhal, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with Crime No.143 of 2022, registered at Bidkin Police Station, District Aurangabad for the offence punishable under Section 302, 307, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, on the conditions that ;

(4)

- (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall not enter his village till conclusion of the trial.
 - (c) The applicant shall attend the trial on every effective date as the trial has already been commenced.
- (iii) Criminal Application No.118 of 2023 stands disposed of.

(S.G. MEHARE, J.)

Mujaheed//