



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

BAIL APPLICATION NO.2064 OF 2023

**BIRU RAMCHANDRA GAWADE
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. S. A. Wakure, Advocate for the Applicant.
Mrs. P. J. Bharad, APP for Respondents-State.
Mr. S. S. Gangakhedkar, Advocate for the Complainant.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th DECEMBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.190/2023 registered with Murum Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 302, 323 of the Indian Penal Code.

2. The investigation was set in motion on the basis of information given by one Karbasappa Parmeshwar Swami. He alleges that his nephew Deepak cultivates the land and having his own tractor. On 21.05.2022 he has been married. The adjacent owner of the land has given his field for cultivation to the accused Biru Ramchandra Gawade, who has laid water pipeline passing through the field of the Deepak. Since Deepak was to plough his land, he was asking accused-Biru Gawade to remove pipeline. On account of the said dispute, there was altercation between him and Deepak. It is further alleged that on 12.05.2023 Deepak was to plough his land and he had called accused-Biru Gawade to remove the pipeline. In the evening at about 7.00 pm the first informant received message from his worker Ashok

Krushnappa Jamadar that there was quarreled between the accused and Deepak because of non-removal of the pipeline. The accused was riding over the person of the Deepak and suffocated his nose, mouth and throttled him. As such Deepak lost his consciousness. The informant rushed to the spot, took Deepak to the Hospital, where he was declared as dead. In pursuance of the aforesaid information, the applicant has been arrested on 13.05.2023. Since then, he is behind the bar. His prayer for grant of bail has been rejected vide order dated 08.09.2023. Hence, this application.

3. Mr. Wakure, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid crime. Even considering the contents of the FIR, the offence punishable under Section 302 of the Indian Penal Code cannot be made out. The applicant is not alleged to have used any weapon. During the scuffle, the Deepak has suffered cardiac arrest and due to which he died. He would further point out that the applicant is disabled person. The possibility of inflated allegations in the FIR cannot be ruled out. The investigation in the matter is complete. The charge-sheet is filed. Further detention of the applicant would not be necessary.

4. The learned APP, so also the learned Advocate appearing for the complainant strongly oppose the prayer for grant of bail. They would submit that there was persistent dispute between deceased Deepak and the applicant. The incident is witnessed by the employee of Deepak. The postmortem report shows cause of death to be cardio respiratory arrest due to asphyxia due to suffocation, which is in consonance with the allegations in the FIR. Mr. Gangakhedkar would invite attention of this Court to the observations in column no.12 of the

postmortem report to contend that hemorrhage was present on the back and thighs, which is suggestive of use of force and responsible for suffocation. He would, therefore, urge that *prima facie* there is sufficient evidence to bring home guilt against the applicant.

5. Having considered submissions advanced, apparently from the contents of the FIR it can be gathered that the deceased Deepak and the applicant had disputes on account of pipeline laid from the part of the field of the Deepak. The First Information Report is based on hearsay information of the incident received from Ashok. Even Ashok Krushnappa Jamadar, who is an eye witness of the incident states that the accused was riding on the person of the Deepak, who was laying on the surface. Apparently, the applicant was not holding any weapon in his hand. The scuffle appears to be sudden without premeditation. From the narration of the incident as stated in the FIR and statement of Ashok, employee of the deceased *prima facie* it is difficult to hold that the applicant had any intention to kill the deceased. Perusal of the postmortem report shows that column no.17 regarding surface wounds and injuries is blank. Apparently there are no external injuries on the person of the deceased. Although, postmortem report indicates cause of death to be cardio respiratory arrest due to asphyxia due to suffocation, the intention to kill cannot be gathered. Ultimately, it would be matter of trial to find out the actual cause of death and contribution of the applicant therein.

6. The applicant is behind the bar for more than six months. Taking into account the aforesaid circumstances, further detention of the applicant would not be necessary. However, it would be appropriate to protect the interest of prosecution by

putting certain conditions while releasing the applicant on bail. Needless to state that the observations recorded above are only for the purpose of disposal of this application and based on *prima facie* consideration of the material in the charge-sheet. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Biru @ Ramchandra Gawade, be released on bail in Crime No.190/2023 registered with Murum Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Sections 302, 323 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall not enter village Kothali, Tq. Omerga, Dist. Osmanabad for the period of one year from the date of his release.
 - c. The applicant shall attend each and every date before the Sessions Court during the trial and shall co-operate for early disposal of the case.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE