

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

BAIL APPLICATION NO. 2139 OF 2023

**BABARAO RAMDAS ZINGRE
VERSUS
THE STATE OF MAHARASHTRA.**

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Advocate for Applicant : Mr. Jadhav Ganesh Ramrao
APP for Respondent/State : Mrs. P.J. Bharad.

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 20.12.2023

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 104 of 2022 registered with Ishlapur police station, District Nanded for the offence punishable under section 302 of the Indian Penal Code.
2. Investigation was set in motion on the basis of the information given by Ramesh Bhaurao Barde, who alleges that on 26.10.2022 at about 8.45 p.m. his elder brother Begaji Barde informed him that the accused Babarao who is husband of their cousin namely Laxmibai was assaulting her and he is going to pacify the dispute. The informant followed his brother Begaji towards the house of Laxmibai. When the informant reached at the spot, scuffle was going on between the accused Babarao and Begaji. The accused Babarao gave a blow with his knee on the private part of Begaji. Begaji collapsed on the spot. When he was taken to the hospital doctor declared him dead.
3. The applicant came to be arrested on 27.10.2022 in pursuance of the aforesaid crime. The investigation progressed. Charge-sheet came to be filed. The prayer of the applicant for grant of regular bail has been rejected

by the Sessions Court vide order dated 30.09.2023. Hence, this application.

4. The learned advocate appearing for the applicant submits that the applicant has been falsely implicated in aforesaid crime. The applicant has no motive to cause murder of deceased Begaji. He would submit that even accepting the contents in the F.I.R. as it is, the offence under Section 302 of the Indian Penal Code cannot be attracted. The applicant is behind the bar for more than one year. The trial is at nascent stage. Hence he urges to release the applicant on bail.

5. The learned A.P.P. strongly opposes the prayer. She would invite attention of this Court to the contents of the postmortem report, particularly the injuries in column No. 15 which depicts that congestion was noted in testis and vessels. She would further submit that the final cause of death as reported by Medical officer is *“terminal due to cardio respiratory arrest, probably secondary to vasovagal response due to painful stimulus to scrotum”*. Therefore, she urges that the cause of death corresponds to the allegations in the F.I.R.

6. Having considered the submissions advanced, it is apparent that the incident took place at the spur of moment. The deceased Begaji had been to the house of the applicant with intention to pacify his dispute with Laxmibai. During this process there was scuffle between the applicant and the deceased. The applicant alleged to have given a blow of knee on private part of the deceased Begaji which led to his death. There was no previous enmity. The applicant has no motive to kill the deceased. No weapon is used in commission of the offence. Postmortem report suggests that no external injuries seen on person of deceased. It is true that a single blow to the private part may be fatal in the given case, however, considering the nature of inception of the scuffle, *prima facie* it cannot be presumed that the applicant had intention to cause death.

7. The applicant is behind bar from 27.10.2022. The offence punishable

under Section 302 of the Indian Penal Code may not attract in facts of the case. In that view of the matter, further detention of the applicant is not necessary. The case is made out for grant of bail subject to conditions. Hence, the order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant Babarao Ramdas Zingre be released on bail in connection with Crime No. 104 of 2022 registered with Ishlapur police station, District Nanded for the offence punishable under section 302 of the Indian Penal Code, on his furnishing PB. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective date before the trial court.

8. The observations made above are restricted for disposal of present application and those are based on *prima facie* consideration of material in charge-sheet.

(S. G. CHAPALGAONKAR, J.)

mkd/-