

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3616 OF 2022

Kiran Hanmant Gaste

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Satyavrat Joshi i/by Mr. Balwant Salunkhe for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/ State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.93 of 2022 registered with Sangli Rural Police Station for offences punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860.

2. The case of prosecution in short is that on 21 March 2022 at 7.30 p.m., the informant with her husband Suresh Nandrekar (deceased) left house on Sagar Pawar's motorcycle for Harimandir Temple. On their return way to home, at around 9.00 p.m. when they reached Gajanan Colony at Haripur Road, an unknown person standing near tree suddenly came and assaulted on the face

of the deceased with axe in his hand. Both the informant and deceased fell down on the road. At that time one other unknown person came and assaulted deceased by iron rod. When she tried to save him, they assaulted the informant also. The deceased was lying in the pool of blood. Thereafter, the informant, Ponkhse, Sumit Sale, Pramod Patil and her daughter took the husband to the Sangli Civil Hospital. Accordingly, first information came to be registered. The deceased succumbed to injuries on 22 March 2022.

3. In pursuance of the supplementary statement recorded on the next date, name of the applicant surfaced. The applicant was arrested on 22 March 2022.

4. The application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973 before the learned Sessions Judge came to be rejected by order dated 12 October 2022. The applicant, therefore, filed present bail application.

5. Learned advocate for the applicant submitted that in the first information report only two persons are stated to be the assailants. However, in the supplementary statement four persons are stated to be the assailants. It is alleged that the applicant is one of the four persons named in the supplementary statement. He submitted that no active role is attributed to the applicant. According to prosecution, he ran away from the spot on the motorcycle with other co-accused.

6. Per contra, learned APP submitted that non-delivery of two-wheeler vehicle of the applicant by the deceased was the motive for committing murder of the deceased. According to him,

supplementary statement was recorded on the next day and, therefore, there is no delay in stating role of the applicant. Considering the motive attributed to the applicant, common intention of the applicant is clear.

7. On perusal of the charge-sheet and material on record, it appears that the role attributed to the applicant is of transporting accused No.3 from the spot of incident. According to prosecution, a day earlier there was quarrel between accused No.2 and the deceased. According to prosecution, accused No.3 had threatened the deceased.

8. The applicant is in jail from 22 March 2022. In the absence of active role of assault attributed to the applicant, the applicant deserves to be released on bail. The applicability of Section 34 *qua* applicant needs to be decided during trial. The charges are yet to be framed. It is unlikely that the trial will be over in near future. Hence, following order:

- a) The applicant be released on bail in relation with C.R. No.93 of 2022 registered with Sangli Rural Police Station for offences punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860 on furnishing P.R. Bond in the amount of Rs.25,000/- along with one or two sureties in the like amount;
- b) The applicant shall mark his presence with the concerned police station on first Saturday of every month till conclusion of trial;
- c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;

- d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;
 - e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
- 9.** The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)