

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

BAIL APPLICATION NO.2897 OF 2022

1. Rohit Anand Zumbade
2. Aakash Umaji Gaikwad ..Applicants
VS.
The State of Maharashtra ..Respondent

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Adv. Swaraj S. Jadhav a/w Adv. Vijay R. Garad for the Applicants.

Mr. S. H. Yadav, APP for the State.

Mr. Jayesh Chavan, API, Rabale MIDC Police Station, Navi Mumbai present.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 21, 2023

P.C. :

1. Heard learned counsel for the applicants and learned APP for the State.

2. This is an application for bail by the applicants-Rohit Anand Zumbade and Aakash Umaji Gaikwad in connection with C.R. No.1 of 2021 dated 01/01/2021 registered with Rabale MIDC Police Station, Navi Mumbai for the offence punishable under Sections 302 read with 34 of the Indian Penal Code, 1860.

3. The applicants are the accused Nos.1 and 4. The

accused No.3-Shankar Kondiba Gaikwad had filed an application for bail being Bail Application No.3094 of 2021 which was allowed by this Court by an order dated 29/07/2022. The order dated 29/07/2022 is reproduced and which reads thus :-

"1. The applicant is charge-sheeted for the offence of murder of one Sachin Gangaram Patil in the intervening night of 31/12/2020 and 1/1/2021.

The case of the prosecution is in order to welcome the new years, one Sachin Gangaram Patil along with Parmeshwar Bajrang Pawar and Nagesh Sonkamble were seated outside the house of Bajrang Pawar. As per the version of the wife of the deceased, they were consuming liquor.

At around 1.45 a.m, Sachin Patil left for his house and Parmeshwar and Nagesh went to a public toilet to attend the nature's call. When they came out, they noticed that their friend Sachin was having a brawl with Akash Gaikwad and Ra... Zhumbade and they were pushing him. When he reached the spot, Akash was seen assaulting Sachin Patil and questioning him as to why he urinated on the given place. He was also being abused. At that time, a phone call was made and it is alleged that the applicant and one Santosh arrived on the spot and they also participated in the assault being mounted on Sachin on account of the fact that he had urinated in front of the house.

2. Sachin was assaulted and became unconscious and was thereafter, taken to the hospital in a rickshaw and was declared dead.

3. The Inquest Panchnama conducted on 1/1/2021 refer to one Hematoma/swelling on the rear side of the head and one wound which was bleeding is also noticed on right eyebrow. Blackness was noticed on his left cheek and back portion of the ear. No other injuries are noticed on the body.

The autopsy being conducted refer to abrasion and contusions and column no.19 make a reference to a scalp hemotoma present over right frontal region 6 x 5 cm and right parietal region 8 x 4 cm. The cause of death has been ascertained as 'hematoma'.

4. During the course of investigation, the complainant's statement came to be recorded. Parmeshwar Bajrang who was accompanying the deceased narrated the incident and make reference to one Rohit and Akash assaulting the deceased by fist and blows and questioning him about his repressive act urinating in the residential locality. Another friend of the deceased and the complainant, Nagesh Sonkamble is alleged to have left the spot, whereas the complainant intervened and accordingly, the present applicant arrived at the spot on phone call being made by Akash Gaikwad, one of the accused. The present applicant is attributed a role of assaulting him on back, stomach, face, head. It is alleged that the applicant along with other assailants fled away from the spot.

5. Statement of Nagesh Sonkamble, who was also present along the deceased and the complainant is also recorded, where he refer to the presence of the applicant along with Santosh, Akash and Rohit. He also state that Akash also pushed him and threatened that he should leave immediately. Akash, Shankar, Santosh and Rohit are alleged to have assaulted the deceased by fist and blows and also they were seen kicking him. When Sachin Patil fell down, someone uttered that he should be taken to the hospital and Nagnath is alleged to have told them that since the assailants were responsible for the injuries, they should be taken to the hospital. Statement of the wife of the deceased Rupali is also recorded and compiled in the charge-sheet, wherein she state that being the night of 31st, her husband was consuming liquor with his friend Nagesh, Parmeshwar Bajrang and Akash Gaikwad. Since she was used to his drinking habit, she did not intervene and went to sleep after having her dinner.

6. Statement of one Vijay Chavan, a rickshaw puller who had taken the deceased to the hospital is also recorded on 2/1/2021, where he state that it is the present applicant and one Akash, who visited his house between 1.30 to 2.00 am and sought his help for taking the injured to the hospital.

7. The prosecution case being compiled in the charge-sheet in form of the statement of witnesses and the post mortem and Inquest panchnama reflect that a scuffle took place on account of the act of the deceased urinating in a residential area and he was questioned about his act and also assaulted by fists and blows. It cannot be however, said with certainty that the head injury which was caused, was on account of the assault or it was caused since he fell to the ground on a blow being given to him.

8. In any case, the prosecution will have to prove the intention and knowledge, for the injury being fatal and that it has caused his death. Since the wife of the deceased has referred that he was consuming liquor, the possibility that he falling on the ground and hitting himself cannot be overruled.

In any case, considering the inconsistency in the version of the witness, who were present on the spot, the prosecution will have to prove its case beyond reasonable doubt, establishing that the applicant is responsible for death of the deceased and the head injury is attributed to him.

9. Ultimately, this will have to be established at the time of trial and in the backdrop of the nature of the evidence compiled in the charge-sheet, he deserve his release on bail.

The learned APP has invited my attention to the antecedents in form of C.R.No. 151/2015 registered u/s. 323, 226, 504, 506 r/w Section 34 IPC.

However, I do not think that the aforesaid C.R shall prevent the release of the applicant on bail on account of the material compiled against him in the charge-sheet. The applicant, however, shall redress himself from interfering with the prosecution case or the witnesses in any manner."

4. It is alleged that four persons assaulted the deceased and the present applicants were amongst them. This is a case of absolute parity. Even the applicants can be

released on bail for the same reasons as in Bail Application No.3094 of 2021.

5. Hence, the following order :-

ORDER

(a) The Applicants–Rohit Anand Zumbade and Aakash Umaji Gaikwad in connection with C.R. No.1 of 2021 registered with Rabale Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

(b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicants should not tamper with evidence.

(c) The Applicants shall mark their attendance on 1st Monday of trimester till framing of charge.

6. The Bail Application is disposed of.

(M. S. KARNIK, J.)