

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.567 OF 2023
(Haribhau s/o Mahadeo Karade Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.B. Gandhe, Advocate for the applicant.
Shri M.J. Khan, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 31, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.33/2023 registered at police station Nandgaon Khandeshwar, District Amravati for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 29/01/2023 and since then he is in jail.

4. The crime is registered on the basis of report lodged by daughter of the deceased namely Shalini Manojrao Dhage on an allegation that on 28/01/2023 she received a message that quarrel is going on between her uncle and her father. Immediately, she went to the agricultural field along with her husband and found that her father is lying in an injured condition on the border of the agricultural land. On inquiry, her father disclosed that

he was assaulted by his brother Haribhau Karde i.e. the present applicant by means of fists and kick blows and by stone. He further disclosed that he was also assaulted by the present applicant by means of stick. Immediately, he was taken to the hospital however, he succumbed to the death.

5. As per the contention of the present applicant that during investigation, the Investigating Officer has recorded the statements of the eye-witnesses who have not attributed the role of assault by means of stick to the present applicant. Thus, there is a contradiction regarding the recitals of the First Information Report and the statements of the eye-witnesses. The other accused who as per the eye-witnesses gave a blow of stick is already released on bail. As far as the allegation against the present applicant is concerned, he has assaulted by fists and kick blows and by stone. Now, the investigation is completed and charge-sheet is filed. His further custody is not required and prays for grant of bail.

6. Said application is strongly opposed by the State on the ground that the applicant has alleged to be committed the murder of his own brother. The recitals of the FIR substantiated by the post-mortem report which shows that the deceased died due to the multiple contusions sustained by him on his head. The internal injuries sustained by the deceased also corroborate the same. Though investigation is completed however,

considering the *prima facie* material, the application deserves to be rejected.

7. Heard learned Counsel Shri Gandhe for the applicant and learned Additional Public Prosecutor for the State. Perused the investigation papers.

8. As per the recitals of the FIR it was the present applicant who has given a blow of stick on the head of the deceased and the deceased succumbed to the injuries. During investigation, the Investigating Officer has recorded the statements of various eye-witnesses who have witnessed the alleged incident and who were present in the adjacent field. From their statements, it reveals that only allegation against the present applicant is that he assaulted the deceased by fists and kick blows and by stone whereas the role of giving blow by stick on the head of the deceased is attributed to the other co-accused namely Devendra Mahalle. Thus, there are contradictory statements regarding disclosure by the deceased and the statements of the eye-witnesses. The post-mortem report shows that the deceased has sustained multiple contusions on head resulted in subdural hematoma left parietal region and death of the deceased is due to the head injury. Admittedly, the informant has not witnessed the incident. The incident is witnessed by the adjacent field owner and they have attributed the role of the present applicant is assault by kicks and fist blows. Now, the investigation is completed and the charge-sheet is filed. Considering the

role of the present applicant, his further custody is not required. There are criminal antecedents as far as the present incident is concerned, it is occurred in a sudden fight and sudden quarrel between the two brothers and the blow was given by the co-accused who is already released on bail.

9. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Haribhau s/o Mahadeo Karade in Crime No.33/2023 registered at police station Nandgaon Khandeshwar, District Amravati for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(iv) The applicant shall furnish his Cell phone number and address along with the

address proof before the Investigating Officer.

(v) The trial Court shall not be influenced by the observations made by this Court which is only for the purpose of deciding the bail application.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*