

Arjun

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

BAIL APPLICATION NO.1858 OF 2023

Anil Mahariya Chouhan

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. B. Sharada, Legal-Aid Counsel, for the Applicant.

Mr. P. H. Gaikwad, APP, for the Respondent-State.

CORAM : MADHAV J. JAMDAR, J.**DATED : FEBRUARY 02, 2024****P.C.:**

1. Heard Ms. B. Sharada, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C. R. No.	37 of 2019
2	Date of Registration of F.I.R.	22/03/2019
3	Name of Police Station	Pimpalgaon Baswant Police Station, District- Nashik
4	Section/s invoked	302 of the <i>I.P.C., 1860</i>
5	Date of Incident	22/03/2019
6	Date of Arrest	22/03/2019

7	Date of filing of Charge-sheet	18/06/2019
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3. As per the prosecution case, the deceased was intellectually disabled. He has a habit of laughing at strangers. The incident in question occurred on 22nd March 2019 at a water canal of Azadnagar, Pimpalgaon Baswant, Taluka-Niphad, District-Nashik. When the accused was swimming in the water canal and was jumping while swimming, the deceased saw that the Accused was jumping while swimming and he started laughing. Due to said action of the deceased, the accused came out of the canal and beat the deceased and threw him in the canal. It appears that the deceased was not knowing how to swim and, therefore, he got drowned in the canal.

4. It is the contention of Ms. B. Sharada, learned Counsel appearing for the Applicant that the accused was arrested on 22nd March 2019 and till date, there is no progress in the trial. As per her instructions, even the charge is also not framed. She submitted that the Applicant is working as a labourer. He had no knowledge that the deceased was intellectually disabled. He submitted that the manner in which the incident occurred clearly shows that there was no intention to commit the offence. The incident had happened in a spur of the moment. She submitted that the Applicant be granted bail by imposing stringent conditions.

5. On the other hand, Mr. Gaikwad, learned APP appearing for the Respondent-State submitted that there are two eye-witnesses to the incident. The action of the Applicant has caused death of an intellectually disabled challenged person. He submits that as the Applicant is a permanent resident of Madhya Pradesh, he will not attend the trial if he is enlarged on bail.

6. A perusal of the record shows that the incident in question occurred on 22nd March 2019. The FIR was lodged on the very day and the Applicant has also been arrested on 22nd March 2019. It is an admitted position that the investigation has been completed and that the Charge-sheet has been filed on 18th June 2019. The trial has not begun and even the charge is also not framed. As per the Charge-sheet there are about 15 witnesses proposed to be examined by the Prosecution. The Applicant is incarcerated for about 5 years. The trial is likely to take a considerably long time.

7. The Applicant is a permanent resident of Madhya Pradesh and he has come to Pimpalgaon Baswant, Taluka Niphad and District Nashik only for the purpose of labour work and he is not the regular resident of the same. Thus, he had no knowledge that the deceased was an intellectually disabled. The record clearly shows that the incident has happened in a spur of the moment. Thus, the Applicant deserves to be released on bail.

8. The Applicant does not have any criminal antecedents.
9. The Applicant does not appear to be at risk of flight.
10. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant-Anil Mahariya Chouhan be released on bail in connection with C. R. No.37 of 2019 registered with the Pimpalgaon Baswant Police Station, District-Nashik on his furnishing P. R. Bond of Rs.5000/- with one or two sureties in the like amount.
- (b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Pimpalgaon Baswant Police Station, District-Nashik on Sunday of every week for six months and after that once in a month i.e. on the first Sunday of every month between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.
- (d) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall

not seek unnecessary adjournments thereat.

- (g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

11. The Bail Application is disposed of accordingly.

12. It is clarified that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]

Note: This Order is corrected as per the speaking to the minutes Order dated 24th April 2024.