

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

CRIMINAL BAIL APPLICATION NO. 3623 OF 2023

Ajay @ Ajju Vijay Chauhan
V/S

....APPLICANT

State Of Maharashtra

....RESPONDENT

Ms Jayshree Tripathi for the Applicant.

Mr. N. G. Patil, APP for the Respondent-State.

Mr. Subhash Pansare, API, Central Police Station, Ulhasnagar-3
present.

CORAM : N. J. JAMADAR, J.

DATE : 29th JANUARY, 2024

P.C.:

1. Heard the learned Counsel for the Applicant and learned APP for the State.
2. This is an Application for bail in connection with CR No. I 164 of 2023, registered with Central Police Station, Ulhasnagar for an offence punishable under Section 302 of Indian Penal Code, 1860 ("the Penal Code") and section 37(1) r/w. 135 of the Maharashtra Police Act.
3. The first informant was on patrol duty. He was informed that a person was lying in an injured condition near Pappu Kirana store, Hanuman Mandir, Ulhasnagar 3. The first informant visited the said spot and found Niranjana (deceased) lying in an injured

state. It transpired that the Applicant had assaulted the deceased by means of bamboo stick and the incident was witnessed by Dinesh Rajput. Eventually, the deceased succumbed to the injuries.

4. Learned Counsel for the Applicant submitted that the incident occurred at the spur of moment. There is material to show that the deceased was in the habit of drinking liquor. His condition was fragile. The post mortem report does not indicate that the Applicant had assaulted the deceased on the vital parts of the body.

5. Learned APP countered the submissions on behalf of the Applicant. Inviting the attention of the Court to the opinion of autopsy surgeon to the effect that the deceased died on account of shock due to hemopneumothorax laceration of right lung due to fracture of ribs due to hard and blunt object, the learned APP submitted that the intention to cause of death of the deceased becomes evident.

6. I have perused the statement of Dinesh Rajput, who, *prima facie*, appears to be the only eye witness to the alleged occurrence. Dinesh Rajput stated that initially the Accused had proceeded towards Imalipada. The deceased, who was then

unknown to the witness, followed him and inquired about the Applicant. After a while the Applicant came there armed with bamboo stick and started to assault the deceased. The later tried to catch hold of the bamboo stick. There was a fight between them. Dinesh Rajput also tried to save the deceased and disarm the accused of the bamboo stick. The deceased fell down and had a vomit.

7. The post mortem report indicates that there are three external injuries. Two injuries were imprint abrasion over region and left scapular region. The third injury was contusion over the right lateral side of midauxiliary line in upper part. The Autopsy Surgeon opined that there was fracture of the ribs. The post mortem does not indicate that there were multiple injuries on the vital part of the body of the deceased. The Applicant allegedly gave blows by means of bamboo stick. There was a fight between the Applicant and the deceased. After the Applicant fled away from the spot the Deceased had a vomit.

8. *Prima facie*, it appears that the Applicant had not assaulted the deceased by means of a deadly weapon on the vital part of the body. The material is required to be appreciated in light of the statement of the wife of the deceased that the deceased was in

the habit of consuming liquor and he was suffering from TB. Whether the Applicant was aware of the fragile condition of the deceased would be a matter for evidence. In the circumstances of the case, whether the offence would fall within the ambit of Section 302 of the IPC would be a matter for adjudication at the Trial.

9. The Applicant is in custody since March, 2023. The investigation is complete for all intent and purpose. Charge sheet has been lodged. I am, therefore, inclined to exercise the discretion in favour of the applicant.

:: O R D E R ::

- (i) Application stands allowed.
- (ii) The Applicant be released on bail in CR No. I 164 of 2023, registered with Central Police Station, Ulhasnagar, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The Applicant shall attend Central Police Station, Ulhasnagar on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of three years or till conclusion of the trial, whichever is earlier.

(iv) The Applicant shall not tamper with the prosecution evidence and give threat or inducement to the first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

(N. J. JAMADAR, J.)