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

CRIMINAL BAIL APPLICATION NO. 3612 OF 2024

Adesh alias Bhaiya Bappa Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Kuldeep U. Nikam, for the Applicant.

Mrs. R.V. Newton, APP, for Respondent- State.

PSI- Mahesh Bhausahab Satpute, Nigadi Police Station, present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 4th September 2024

P. C.

1. Heard Mr. Nikam, learned Counsel for the Applicant and Mrs. Newton, learned APP for the Respondent-State.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:

1.	C.R. No.	348 of 2023
2.	Date of registration of F.I.R.	13 th June 2023
3.	Name of Police Station	Nigdi, Pune, District-Pune
4.	Sections invoked	Initially 307, 504 r/w 34 of <i>I.P.C.</i> , 1860; 302, 307, 504, 506 r/w 34 of <i>I.P.C. of 1860.</i>
5.	Date of incident	12 th June 2023
6.	Date of arrest	14 th June 2023
7.	Date of filing Charge-sheet	14 th September 2023

3. The present Applicant is Accused No.1. He is the brother of the Accused No.2. As per the prosecution case, at the relevant time, the informant, his cousin i.e. the deceased and another friend were talking with each other and at that time, the present Applicant and Accused No. 2 arrived on an Activa scooter and demanded an amount of Rs.500/- from the deceased. The deceased refused to give the said amount. Thereafter the Accused went away. The deceased, informant and their friend- Bhairavnath Ashok Javale thereafter went to a liquor shop and consumed liquor. When they were returning, at that time the Accused came on the said Activa scooter and crashed into the deceased. The brother of present Applicant- Sunny was riding the Activa scooter. The Accused No.2 questioned the deceased as to why he had not given money and therefore a quarrel broke out between them and at that time, both the Accused persons assaulted the deceased with a paver block and the deceased succumbed to the resultant injuries on 14th June 2023.

4. It is the submission of Mr. Nikam, learned Counsel for the Applicant that at that time, the deceased and his friends were under the influence of alcohol. He submitted that the incident in question took place on the spur of the moment and that there was no motive to commit the offence in question. He submitted that the Applicant is

working as a labourer. He submitted that the Charge-sheet was filed and therefore the investigation is completed. He therefore prayed that the Applicant be enlarged on bail.

5. On the other hand, Mrs. Newton, learned APP vehemently opposed the Bail Application. She submitted that there are eye-witnesses to the incident and therefore the Bail Application be rejected. She submitted that the injuries are in consonance with the statements of the witnesses. She also pointed out Post Mortem report which is on page 52. She pointed out following observations in the Post Mortem report :

“Skull : Comminuted fracture present over left parieto-occipital bone of skull vault, a linear fracture present over right temporal bone to occipital bone measuring 12 cms.”

She therefore submitted that the Applicant alongwith other co-Accused have assaulted the deceased mercilessly. She also submitted that there is one antecedent being C.R. No. 354 of 2018. She therefore submitted that the Bail Application be rejected.

6. Perusal of record shows that the incident in question took place on 12th June 2023, F.I.R. was lodged on 13th June 2023, the Applicant was arrested on 14th June 2023 and the Charge-sheet was filed on 14th September 2023.

7. As per the Charge-sheet, there are 14 witnesses proposed to be

examined by the prosecution. Therefore, the trial is likely to take a considerably long time.

8. *Prima facie*, there is substance in the contentions of the learned Counsel for the Applicant that the incident has taken place on the spur of the moment.

9. There is substance in the contention raised by the learned APP that both the Accused have mercilessly assaulted the deceased, however, it is required to be noted that when the incident in question took place, the Accused as well as deceased were under the influence of alcohol. In any case, the incident in question took place on the spur of the moment.

10. The Applicant is a labourer aged 23 years. Although there is one antecedent of the year 2018 being C.R. No. 354 of 2018, registered under Sections 324, 323, 504 r/w 34 of the *Indian Penal Code, 1860*, all offences are bailable offences.

11. The Applicant does not appear to be at risk of flight.

12. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

13. In view thereof, the following order:

ORDER

(a) The Applicant - Adesh alias Bhaiya Bappa Gaikwad be released on bail in connection with C.R. No.348 of 2023 registered with the Nigdi Police Station, Pune, District - Pune

on his furnishing P.R. Bond of Rs.25,000/- with one or two local solvent 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 Nigdi Police Station, Pune, District – Pune once every week on every Sunday 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 prosecution evidence and shall not contact or influence the Complainant or any prosecution witness 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.

14. The Bail Application is disposed of accordingly.
15. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

(MADHAV J. JAMDAR, J.)