



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO. 20 OF 2025
WITH
CRIMINAL APPLICATION NO. 444 OF 2025**

Vijay S/o. Pratap Kagda,
Age : 33 Years, Occu. : Labour,
R/o. Chota Murlidharnagar,
Near Railway Gate, Aurangabad.
At Present R/o. Railway Gate No.56,
Walmiki Ashram,
Dist. Chhatrapati Sambhajinagar.

... Applicant

VERSUS

The State of Maharashtra
Through Mukundwadi Police Station,
Dist. Chhatrapati Sambhajinagar

... Respondent

....
Advocate for Applicant : Mr. Nilesh S. Ghanekar
APP for Respondent-State : Mrs. Vaishali S. Chaudhary
Advocate for Informant (Assist to APP) : Mr. Jitendra S. Jain
....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 10th February, 2025
PRONOUNCED ON : 12th February, 2025**

ORDER :

1. Criminal Application No.444 of 2025 is at the instance of the informant seeking permission to assist learned APP to oppose the bail application. For the reasons mentioned in the application, the

applicant/informant is permitted to assist learned APP. The application is accordingly disposed off.

2. The applicant seeks enlargement on regular bail on account of his arrest in crime bearing No.0286 of 2024, registered at Mukundwadi Police Station, Dist. Chhatrapati Sambhajnagar, for offences under Sections 103(1), 115(2), 118(1), 351(3) and 352 of the Bharatiya Nyaya Sanhita, 2023.

3. Pointing to the date of arrest as 16.07.2024, Learned counsel for the applicant submitted that, occurrence is in fact of dated 15.07.2024 and FIR is of dated 16.07.2024 and as such, it is delayed FIR. Learned counsel pointed out that, FIR is lodged by brother of deceased. That, there are allegations that, on account of demand of Rs.50/-, there was assault. He further pointed out that, occurrence has been split into two episodes. That, in first episode, it is alleged that, there was mere quarrel, but, during second episode, which allegedly took place near railway track, learned counsel pointed out that, there is allegation of keeping up a stone lying on the spot and hitting it on the head, therefore, incidence has happened all of a sudden.

4. Learned counsel further pointed out that, the applicant was unarmed. That, he has allegedly used stone lying on the spot. That, there is single blow. He further pointed out that, though there are statements of three eyewitnesses, these witnesses in statement recorded under Section 180 of BNSS, narrated about seeing the occurrence, but before learned Magistrate, when they gave statement under Section 183 of BNSS, they have not stated about seeing any of actual occurrence. That, even in postmortem report, there is single injury to be responsible for death. That, now charge-sheet is already filed in October 2024 itself and as the applicant is behind the bars since more than 06 months, learned counsel seeks grant of bail.

5. Learned APP opposed the bail application on the ground that, there is direct evidence. That, eyewitnesses have narrated the occurrence and as such, role of the applicant is crystallized. That, there is death due to head injury. That, assault was on a vital part like occipital region. Therefore, both intention and knowledge are attributable to the applicant. Hence, considering the serious offence, she seeks rejection of the application.

6. Heard both the sides. Perused the papers. FIR is at the instance of one Vishal Anil Mule. He has reported that, on

15.07.2024, at around 04.00 p.m., the present applicant approached him and demanded Rs.50/-, but he refused. The informant claims that, he reported this incidence to his deceased brother Ganesh. Then, at around 07.00 p.m., when his brother Ganesh was in the vicinity of railway station, the present applicant allegedly came there. The informant further claims that, when he had been to urinate, at that time, he saw the present applicant was quarreling with his brother and even claims to have seen the present applicant hitting his brother Ganesh with a cement stone and therefore, his brother fell and remained motionless. That, on being taken to the hospital, he was declared dead.

7. Statement of the informant is also recorded under Section 183 of BNSS and therein, he has reported that, while he was urinating, he heard shout of his brother Ganesh and at that time, the present applicant had cement stone and his brother was already lying down. Therefore, as reported in FIR about personally seeing the brother being hit is not finding place in statement recorded under Section 183 of BNSS and even in statements of alleged eyewitness namely, Gahininath Chopade, Sagar Birare and Amol Raut. They have narrated the events. However, apparently, it is emerging that, incident is at 07.00 p.m. and there is assault by the present applicant

by means of cement stone, which was said to be already lying there. Therefore, such article is apparently picked up and used in hitting on the head.

8. Now, investigation is over and charge-sheet is said be filed in October 2024. As the applicant is behind the bars since July 2024 and when no further recovery is shown at the instance of him and when there is no immediate prospect of matter going for trial, relief as prayed deserves to be granted.

ORDER

- i) The application is allowed.
- ii) Applicant Vijay S/o. Pratap Kagda, be released on bail in connection with Crime No.0286 of 2024, registered with Mukundwadi Police Station, Dist. Chhatrapati Sambhajinagar, on executing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- iii) The applicant shall not tamper prosecution evidence.
- iv) Bail before the trial court.

[ABHAY S. WAGHWASE, J.]