

**IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL
SESSIONS JUDGE, PANVEL RAIGAD**

ORDER BELOW EXHIBIT 1 IN BAIL APPLN.NO.201/2019
CNR NO.MHRG1700004902020
(Dated 13/03/2020)

The applicant/accused Sumit Santosh Kendale has preferred present application u/s.439 of Cr.P.C. for grant of bail in C.R.No.I 20/2020 registered with Kharghar Police Station, u/s.302 of the Indian Penal Code.

2. Heard Ld. Adv. Shri Prasad Patil for the applicant who submitted that, the applicant/accused was arrested on 21/01/2020 in the background of the complaint lodged by the brother of the injured Jitesh who later on succumbed to injuries during hospitalisation that, on 14/01/2020 he received a phone call of Jitesh with information that he has been assaulted and called him to the spot situated at Vishwjit High School, Kharghar. The complainant further informed that when he visited the spot he found Jitesh sitting on the motorcycle and found certain injuries on his person. Complainant informed that upon inquiry Jitesh pointed out towards applicant who was standing there and he further informed that upon inquiry applicant informed that on account of parking of motorcycle on a road he had quarrel with Jitesh and assaulted him.

3. Ld.Adv.submitted that, in the complaint it has been further submitted that thereafter complainant resolved the dispute between applicant and Jitesh and later on took Jitesh to the hospital for treatment and thereafter went house. Ld.Adv.submitted that, it is further informed in the complaint tha thereafter on 17/01/2020 on complaints of ailment Jitesh was taken to the hospital whereupon MRI test, medical officer advised them for shifting to the hospital and lodged the complaint against the applicant.

4. Ld.Adv.submitted that, on filing of complaint on 21/01/2020 on the same day applicant was arrested. Ld.Adv.submitted that, during hospitalisation it was informed that, Jitesh succumbed on 23/01/2020 and as such additional section of 302 of IPC was applied in the matter,

5. Ld.Adv.submitted that, from the contents of FIR it appears that the scuffle took place between the parties on trifle ground of parking of vehicle and at the material time the disputes between the parties were also resolved by the complainant himself. Ld.Adv.submitted that, not lodging of complaint at tha time clearly indicates that there were no grievances remained between them. Ld.Adv.submitted that, only after further hospitalisation after three days of the alleged incident the complaint was registered and it was made more severe after death of Jitesh.

6. Ld.Adv.submitted that, the applicant has no intentions or motive to take the life of Jitesh and the present matter at the most will fall under sec.304 of IPC. Ld.Adv.submitted that, the investigation is almost over and only the formality of filing charge-sheet is remain.

7. Ld.Adv.submitted that, the applicant is 19 years of age and is college going boy and in the last week of the month his examinations are scheduled. Ld.Adv.submitted that, applicant has no other criminal antecedent and he is ready to abide the conditions that may be imposed by this court. Ld.Adv. further submitted that applicant is permanent resident at the given address and prayed for bail.

8. Ld.APP Shri Yerunkar assisted by Adv.P.V.Mhatre resisted the application and submitted that due to merciless assault by the applicant, injured Jitesh sustained fatal injuries who succumbed during hospitalisation. Ld.APP submitted that there is CCTV footage showing that by wearing shoes the applicant has assaulted Jitesh at the time of incident. LdAPP submitted that the investigation is still in progress and there is possibility of tampering of prosecution witnesses.

9. Upon hearing the learned advocates and after going through the case papers more particularly FIR, it appears that though the incident allegedly occurred on 14/01/2020, the

offence was registered on 21/01/2020, more probably for the reasons mentioned in the FIR only that at the material time when complainant visited the spot of incident, though he saw certain injuries on the person of Jitesh, after appraising the circumstances behind the scuffle, the complainant himself has resolved the dispute between Jitesh and present applicant. It also appears that at the material time Jitesh was taken to the hospital and after treatment he was taken to the home which shows that at the material time no complexity was noticed in the health of Jitesh.

10. It appears that, on 17/01/2020 when certain ailments were complained by Jitesh he was taken to the hospital and was admitted. Here also the complainant waited till 21/01/2020 for lodging the complaint. It is unfortunate that during hospitalisation Jitesh succumbed to the injuries on 23/01/2020. Upon hearing there appears some substance in the submissions of Ld.Adv.of the applicant regarding the applicability of sec.302 of IPC in the matter in the background that the quarrel allegedly took place between Jitesh and applicant. It is to be noted that at the material time complainant himself found no serious issues for approaching the police station, on the other hand he had resolved the dispute between the parties.

11. From the documents on record it appears that material investigation is over by recording the statement of the witnesses and collecting other evidence in the form of CCTV footage. Whether the applicant had alleged motive and intentions of taking life of Jitesh is a issue of trial but prima facie the circumstances does not attract ingredients of section 302 of IPC.

12. Needless to mention that applicant is young boy of 19 years and he is college going student and it has been informed that his examinations are forthcoming. Admittedly there are no other criminal antecedent to his discredit and he is reported permanent resident at the given address. Considering peculiar circumstances in the matter, this court is of the view that applicant can enlarge on bail with certain condition. Hence order :

ORDER

1. Application Exh.1 is hereby allowed.
2. **Applicant/accused Sumit Santosh Kendale in C.R.No. I 20/2020 registered with Kharghar Police Station, u/s.302 of the Indian Penal Code be released on P.B. & SB of Rs.15,000/-.**
3. Applicant to attend concerned police station on every Monday in between 11.00 a.m. to 02.00 p.m. till filing of charge-sheet and to co-operate with the investigation.
4. Applicant not to tamper the prosecution witnesses.

5. Bail before concerned JMFC court.
6. Application is accordingly disposed of.

(Directly dictated in open court on the office computer.)

Panvel (R. G. Asmar)
Dated :- 13/03/2020 Addl. Sessions Judge, Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	S.J.Sheth
Name of Court	Addl. Sessions Judge, Panvel-Raigad
Date of Dictation	13/03/2020
Order signed by the P.O. on	13/03/2020
Order uploaded on	21/03/2020