

MHNS070010792024



**Sessions Case No. 80 of 2024**  
The State of Maharashtra  
Vs.  
Devaji Daga Borase (A-2)

**ORDER BELOW Exh.07**  
**(Passed on 27.06.2024)**

01] This is an application under Section 439 of the Code of Criminal Procedure,1973, for grant of regular bail to accused No.2 namely Devaji Daga Borase in connection with C. R. No.7/2024 registered at Nandgaon Police Station, for the offence p/u/s 302 r.w. 34 of the Indian Penal Code.

02] Ld. APP appeared for the State/Respondent. He opposed the application by filing written say of I. O. at Exh.9.

03] Heard, Shri. S. R. Shejwal, Ld. advocate for the accused No.2 and Shri. S. K. Sonawane, Ld. APP for the State/Respondent. Both argued vehemently.

04] Ld. Advocate for the accused No.2 submitted as under :-

Informant is the wife of the deceased. She has alleged that when she saw the dead body of her husband the injuries were not like accidental injuries at that time she came to know that the accused No.1 and 2 committed the murder of deceased on the count of financial transaction and try to show it as an accident. There is no eye witness to the alleged incident. The case of prosecution is totally based on circumstantial evidence. The informant has not witnessed anything about the alleged incident. She has given report only on the basis of information told to her by other person. There is no evidence to show motive or intention of accused. Therefore, Section 302 of the Indian Penal Code could not be attracted. As investigation is complete, charge-sheet is filed and case is committed to the Court of Sessions, there is no reason to keep accused No.2 in the jail. Further, custodial interrogation

with the accused No.2 is not required. If he is not released on bail, it would amount to pre trial punishment. No purpose would be served in keeping the accused No.2 behind the bars. He has no criminal antecedents. He is having permanent residence. He will not pressurise the witnesses. He is the only earning member of his family. He is ready to abide all conditions of bail. He will co-operate with the Investigating Officer for further investigation, if any. Therefore, regular bail be granted to accused No.2.

05] On the other hand, Ld. APP for the State submitted as under :-

There is sufficient evidence and material against the accused No.1 and 2 showing their involvement in committing the murder of deceased and falsely showing that the deceased died in an accident. Both the accused tried to destroy the evidence. Accused No.1 during investigation has shown the place where the deceased was murdered and his dead body was kept. Further accused No.2 has produced his shirt having blood stains. During investigation iron pipe and stone by which the deceased was assaulted are seized. Offence is of murder. It is punishable with death or imprisonment for life. Accused No.1 and 2 in furtherance of their common intention committed the murder of deceased. If accused No.2 is released on bail, he will pressurise the informant and witnesses and he will commit similar kind of offence. Therefore, the application should be rejected.

06] It is not disputed that C. R. No.7/2024 is registered at Nandgaon Police Station for the offence p/u/s. 302 r/w 34 of the Indian Penal Code and the case is committed to the Sessions Court, Malegaon and allotted to this Court for the disposal as per law. After going through the charge-sheet and police papers, it prima facie appears that the informant has not witnessed the alleged incident. According to informant the deceased had gone with accused No.1 and 2 for watching ' Tamasha ' and at 11.00 p.m. one Sudarshan Nikam had informed her on phone that her husband met with an accident, therefore she went at

the spot at that time she saw the injuries sustained to her husband i.e. deceased and those injuries were not like accidental injuries, therefore, she was having doubt that on the count of quarrel on account of money both the accused assaulted the deceased and committed his murder and both the accused tried to show it as an accident.

07] I have gone through the statements of other witnesses and other police papers. There is no eye witness to the alleged incident. The prosecution case is totally based on circumstantial evidence and the evidence collected during the investigation. On the basis of suspicion the accused are arrested. It seems that on the basis of alleged recovery and memorandum recorded u/s 27 of the Indian Evidence Act the case of prosecution is that both the accused committed the murder of the deceased and tried to show it as an accident. I have gone through the Postmortem Notes. The medical officer had reserved his opinion and viscera is sent for C. A.

08] The applicant-accused i.e. accused No.2 is in Jail since 15.01.2024. No purpose would be served in keeping the applicant-accused behind the bars. If he is kept behind the bars it would amount to pre trial punishment to him. It is settled law that bail is a rule and jail is an exception. So far as the objections raised by the Ld. APP for the State are concerned, care of it can be taken by imposing certain conditions on the applicant-accused. In view of this, it can be said that the applicant-accused is entitled for regular bail on certain conditions. As such, the application is to be allowed by imposing certain conditions. Hence, I pass following order.

### **ORDER**

The application is allowed as under :-

1. Applicant-accused i.e. accused No.2 namely Devaji Daga Borase R/o.Sakora, Tal. Nandgaon, Dist. Nashik, who is in magisterial custody in connection with C. R. No.7 of 2024 registered at Nandgaon Police Station, for the offences p/u/s 302 r. w. 34 of the Indian Penal Code, be released on bail on his executing P. R. bond of Rs.1,00,000/- (Rs. One

lac) with solvent surety/sureties of the like amount and on following terms and conditions :-

- i) The applicant-accused shall remain present at any place as and when called by the I. O. for the purpose of further investigation, if any.
  - ii) The applicant-accused shall produce any document/ documents, article/articles, mobile phone, and sim card numbers, etc. which may be required by the I.O. for the purpose of further investigation, if any.
  - iii) The applicant-accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade them from disclosing such facts to the Court or to any Police Officer.
  - iv) The applicant-accused shall attend concerned Police Station on first or third Sunday of every month between 11.00 a. m. to 01.00 p.m. for the period of six months from today.
  - v) The applicant-accused shall not commit any offence in future.
  - vi) The applicant-accused shall not tamper with the prosecution witnesses and evidence in any manner.
2. The applicant-accused shall furnish his detail address and temporary address alongwith the Photo ID.
  3. The applicant-accused shall furnish names and detail address and mobile phone numbers of his three close/blood relatives.
  4. If there is change in the address of applicant-accused, he shall inform about it to the concerned Court and Police Station.
  5. The applicant-accused to submit his Passport, if any, to the concerned Police Station within 15 days of his release from the Jail.
  6. Inform accordingly, to the D.G.P./PP and Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the applicant-accused.)

( K. R. Patil )

Date- 27/06/2024.  
Malegaon.

Addl. Sessions Judge, Malegaon.  
Dist. Nashik.

