

MHPU140014962024

**SESSIONS CASE NO. 80/2024**



**State of Maharashtra  
Vs.  
Sarfaraj @ Shafik Yusuf Shaikh**

**ORDER BELOW EXH.7**

This bail application is filed by accused-Sarfaraj @ Shafik Yusuf Shaikh after filing of charge-sheet in the matter, to release him on regular bail under Section 439 of the Code of Criminal Procedure (for short Cr.P.C.), in Crime No. 1104/2023, registered at Daund Police Station, for the offences punishable under Section 302 of the Indian Penal Code.

2. Heard learned advocate for accused and learned A.P.P. for State. Perused the charge-sheet and material placed with it.

3. In this offence, complainant Ganesh Maruti Kakade lodged a report at Daund Police Station on 09.11.2023, that at about 7.00 a.m., he was informed at home by Sarpanch Amol Pawar on phone that his cousin brother-Dnyandeo was assaulted by someone, whereby blood was oozing from his head, for which he was taken to Rural Hospital, Daund for treatment. Accordingly, the informant with other persons went to the hospital, where Dnyandeo was in unconscious state, having suffered bleeding injury on backside of head and further injuries of beating on body. The Medical Officer referred after treatment to said Dnyandeo at Sassoon hospital, Pune. The complainant enquired about the incident and came to know of the C.C.Tv. footage at the spot on road in front of Hind talkies captured at Prakash medical. It revealed that on 09.11.2023 at about 04.17 a.m., accused Shafik Yusuf Shaikh was hitting wooden log on the head of deceased as

well as on the other parts of body with intent to kill. It is further informed that before about a month, when deceased was in Daund, the accused had altercations with him and accused had threatened to kill to deceased, as was informed by deceased to him. Initially offence under section 307 of IPC came to be registered. However, deceased died during treatment and section 302 of IPC came to be added. Accused came to be arrested on 09.11.2023 itself, who has now moved to release on bail claiming innocence and that he has no nexus with the crime.

4. In the submissions of Ld. advocate for the accused, the contention made in FIR by informant would not show any incriminating substance against the accused and it is only hearsay. No document of treatment provided to the deceased in Rural hospital, Daund are filed on record. The evidence of C.C.Tv. footage is not reliable one. The contention of complainant regarding threat by accused to deceased before one month is also hearsay and without any substance, as allegation is made only to rope the accused in the crime. No evidence of said incident is available and no police complaint was filed. The case is based on circumstantial evidence, for which there is no witness. This cannot be an offence under section 302 of IPC, as it may fall as the case under exceptions or otherwise. C.C.Tv. footage and inquest panchmana are contradictory. Statement of wife of deceased by name Kalpana and further statement of Santosh Misal would show that no investigation as to the alleged incident mentioned therein is made and no C.C.Tv. footage to that effect is recovered. He submitted that there is no direct evidence of the incident and therefore, the material placed on record would *prima facie* show that the accused is entitled for bail. He submitted that family of the

accused is dependent upon him. His parents are seriously ill. Accused has no criminal antecedents. Therefore, he submitted to release the accused subject to conditions.

5. On the other hand, Ld. A.P.P. for the State submitted that contents of FIR would show that the accused is specifically named therein to be the culprit, who assaulted the deceased as a consequence of executing the threat given by accused before about a month, as per statement made by him to his wife and complainant. C.C.Tv. footage captured from the spot shows actually the assault by wooden log on the head and body parts of victim by accused. The head injury was serious one. Deceased died as a consequence of suffering head injury caused by accused. He referred to statements of witnesses and stated that at the relevant time, they stated to have seen the deceased going towards spot. Ld. A.P.P. submitted that there is sufficient evidence on record to establish at this stage *prima facie* that accused has committed offence of a serious nature. Therefore, he submitted to reject the application.

6. FIR specifically named the accused to be the person who has assaulted on head and body parts of the deceased, who has seen the deceased after receiving information. C.C.Tv. footage obtained on 09.11.2023 of about 04.17 hours, shows that the present accused was assaulting the deceased on head and the parts of the body by wooden log being a dangerous substance. Thus, there is evidence as above against the accused of *prima facie* involvement in the crime. Not only this, the informant as well as wife of deceased by name Kalpana have stated in their respective statements that the same accused had threatened to kill the deceased before about a month. She has stated that on 08.11.2023,

deceased had been to the house of her father-in-law, where she was to see his ill mother-in-law. They got asleep in the night and on 09.11.2023, at about 3.00 a.m., deceased woke her up and told that he was going to his home as there were number of impending agricultural works, and also asked her to return home in the morning. The deceased started going home by walking. Thus, she has seen the deceased leaving the said place. The witness Rama Lashkare, being the Security guard, had seen the deceased at about 3.00 to 4.00 a.m. Witness Ashok Shinde stated that at about 4.30 a.m. on that date, when he was proceeding towards Shivaji square on the spot before Hind talkies, he saw quarrel going on between two persons, out of whom, one person was possessing wooden log and proceeding ahead and one person was found in injured state, of which, he gave intimation on phone to Daund police station near Dr. Ambedkar square. On one wooden cot, he saw the person making assault was sitting thereon with a wooden log and after going near him, he was revealed to be the accused Sarfaraj @ Shafik, who was known to the said witness. The witness further stated that accused told him that deceased abused him, therefore, he assaulted the deceased with wooden log. Subsequently, he came to know on enquiry that the injured person was Dnyandeo Kakade. Friend of Ashok Shinde also stated the same version, who accompanied him. The evidence of both the witnesses shows that they have seen incident and their version is supported by evidence of C.C.Tv. footage. Witness Santosh Misal has seen the deceased and one person quarreling.

7. Thus, insofar as offence is concerned, there is *prima facie* evidence on record showing the involvement of the accused in the offence, who has subjected the deceased to death by assaulting

with a wooden log. Investigation is carried out and after collection of evidence, charge-sheet is filed. The wooden log is seized. The deceased is stated to have died, by the Medical Officer, due to complications following head injury. Ld. Advocate for accused submitted that this may be a case of grave and sudden provocation. However, it appears from the material on record that accused approached the spot with a wooden log and there was a previous dispute between him and deceased as per statement made by deceased to his wife and informant, in which, accused had threatened to kill the deceased. In such facts and circumstance of the case, the offence alleged against the accused is of serious nature and there is every likelihood of tampering the evidence and threatening of the witnesses. No case is made out by the accused to release him on bail. Hence, the following order.

**ORDER**

Application is hereby rejected.

Date :- 04.09.2024.

(V. C. Barde)  
Additional Sessions Judge,  
Baramati.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : I. E. Deshmukh  
Stenographer (G-1)

Court Name : V. C. Barde  
Additional Sessions Judge,  
Baramati, Dist. Pune.

Date of Order : 04.09.2024.  
Order signed by  
Presiding Officer : 04.09.2024.  
Order uploaded on : 05.09.2024.