

ORDER IN CRI. BAIL APPLICATION EXH.NO.04
(Dt.28.07.2022)

1. The application is under Section 439 of Criminal Procedure Code of accused No.1 Golu @ Pratik Chandrabhan Wadaskar, since arrested and detained in Crime No.269/2021, registered with Shirpur Police Station for the offence punishable under section 302 r/w 34 of Indian Penal Code.
2. In short, the prosecution case is that on 10/10/2021 in between 7 to 8.30 p.m. in front of Welldone Bar, Abai point, Wani, District-Yavatmal, the accused namely Golu @ Pratik, Someshwar, Praful and Haridas in-furtherance of their common intention assaulted to one Aakash Haridas Govardipe by means of steel angle and thereby committed an offence of murder punishable under section 302 r/w 34 of Indian Penal Code.
3. According to accused No.1 Golu @ Pratik, he has been falsely implicated in the crime. There is no eye witness of the incident. He has been implicated in crime on the basis of statements two witnesses, whose version is not reliable. No motive or intention to kill Aakash, is shown by prosecution. Even assumed that he is involved in the crime, there was no assault on the vital part of Aakash, so as to cause his death. No intention to kill Aakash, is appearing from the nature of crime. He claimed that he shall abide by the terms and conditions of the bail, if released.
4. The application has been objected by Shirpur police/prosecution, vide reply Exh.7 on the premise that Aakash

was mercilessly assaulted by co-accused Golu @ Pratik by means of steel angle. He was brutally beaten by bringing him in conscious state by pouring of buckets of water on his person. The co-accused Someshwar caught hold to Aakash and the accused No.1 Golu @ Pratik assaulted him by means of steel angle. The offence is serious one. It is grave in nature. The release of accused on bail, would affect on trial. He may threaten the informant and witnesses. He may abscond.

5. Heard learned counsel for accused No.1 Golu @ Pratik. Heard learned APP. Perused application, say and the charge sheet. On its basis, following points rise for the determination and the findings to each of them for the reasons recorded as below.

Points	Findings
1. Whether a case has been made out to grant the relief of bail to accused No.1 Golu @ Pratik ?	No.
2. What order?	.. The bail application is dis-allowed.

REASONS

As to point No.1:-

6. A perusal of the chargesheet, particularly the FIR, the panchanama of the CCTV footage inspection and from the statements of eye witnesses, namely Sachin Madavi, Sunny Vishwakarma, Rushi Dumane and Pravin Shankawar , it appears

that at the time of commission of offence, the accused No.1 Golu @ Pratik was well present at the spot of incident. Co-accused Someshwar caught hold the legs of Aakash. Accused Golu @ Pratik first assaulted to Aakash by means of steel rod used for cleaning the surface of the Welldone Bar. He gave the fist blows and slaps to Aakash. Accused Praful brought one steel angle and accused No.1 Golu @ Pratik gave the blows of that steel angle on the back, waist & buttock of Aakash. At that time the legs of the Aakash were caught by accused Someshwar. Aakash was also assaulted at his toe by means of steel angle. From the chargesheet, it is appearing that the accused No.1 Golu @ Pratik shared the common intention with other co-accused. They in furtherance of common intention assaulted to Aakash by means of steel angle. At the material time of assaulting Aakash by means of steel angle, his legs were caught hold so that he should not resist or avoid the beating. Aakash was mercilessly beaten by the accused. At the time of assault, when due to excessive beating, he was going in unconscious state, he was made conscious by repeatedly pouring water on his person. The offence is serious one. Though, the alleged blows of the steel angle were on the back, waist & buttock of Aakash, the brutal beating was as such which Aakash could not sustain. It is not that one or two blows of the steel angle were inflicted on the person of Aakash. Continuously, the beating by means of steel angle was going on. When Aakash was felling unconscious, he was brought in conscious state by pouring water on his person, so that again he may be subjected to beating. The act of the accused may not be pre-mediated, but on the spur of the

movement, the common intention of the accused to cause the death of Aakash developed. It can be seen from the manner in which brutally Aakash was assaulted by the accused. The blows of steel angle on the person of Aakash were fatal and brutal. Therefore, the argument of learned counsel for the accused can not be accepted that there was no motive or intention to kill Aakash.

7. At this initial stage, it may not be proper to comment on the conduct of witnesses namely Sachin Madavi, Sunny Vishwakarma, Rushi Dumane and Pravin Shankawar that they did not inform the incident to police. Said conduct of those witnesses may be considered at the trial.

8. It is tried to canvass by the accused that after the alleged incident of 7.00 pm to 8.30 pm of 10.10.2021, no immediate steps were taken to report the incident to police. The FIR was lodged at 2.30 pm of 11.10.2021. The delay in lodging the FIR has not been explained. A perusal of the FIR of first informant Maya, it is appearing that providing immediate medical treatment to Aakash was necessary. Therefore, first he was taken at the Dispensary of Dr. Choudhary of village Mohada. While taking to the hospital of Chandrapur, Aakash died. In FIR itself the delay has been explained by the first informant Maya. The aspect of delay in lodging FIR may be considered at the trial of offence. Said aspect, prima-facie not sufficient to discard the entire FIR, branding as false and frivolous.

9. Considering the gravity of offence, its brutality and seriousness, the accused No.1 Golu @ Pratik is not entitled to be released on bail. No prima facie case has been made out to grant the concession of bail to him. Considering the prime role played in commission of crime and active involvement in crime, it is not fit to grant the relief of bail. There are chances of threatening the first informant and material witnesses from him, if released on bail. Hence answering the point No.1 in negative, following order is passed.

ORDER

The Cri. Bail Application Exh.No.04 is dis-allowed and disposed off.

Dated : 28/07/2022.

(H.S. Satbhai)
Additional Sessions Judge-2,
Kelapur.