

ORDER BELOW EX. 01 IN CRIMINAL BAIL APPLICATION
NO. 1230 OF 2022

(Nilesh @ Sonu Dadu Ahire (Accused no. 1) vs. The State of
Maharashtra through Upnagar Police Station)

This is the bail application under section 439 of the Criminal Procedure Code, 1973 filed by the applicant-accused no. 1 in crime No. 18 of 2022 registered with Upnagar Police Station, Nashik for the offences punishable under sections 302, 326, 323 read with 34 of the I. P. C.

02] The applicant contended that false and fabricated case is registered against him. The bail applications of accused nos. 2 and 3 in Sessions Case No. 314 of 2022 were rejected. Now, charge sheet is filed. So, he has right to file fresh bail application. He has not committed the offence. He has no intention to commit offence. The deceased was addicted to liquor and was annoying the people of vicinity. The offence was committed in dark. So, the identification is not reliable. The case is based upon hearsay evidence. The medical evidence is against the prosecution case. He has not caused any grievous injury to the deceased. He has cooperated in the investigation. Nothing is seized from him. His family is dependent on him. No purpose will serve to keep him behind bar. He has no enmity with the deceased. He is ready to abide any conditions imposed by the court. He has prayed for grant of bail.

03] APP filed say at Ex. 04 and I. O. filed say at Ex. 5. They have stated that the offence is of serious nature. All the accused in furtherance of their common intention on the count of old dispute with accused no. 1 assaulted the said deceased by kick and fist blows. The accused nos. 2 and 3 caught hold the hands of the said deceased and accused no. 1 by piece of tile assaulted on the head of the said deceased.

When the complainant shouted, they ran away on motor cycle. There is ample evidence against them. The clothes used by them at the time of offence is seized. The motor cycle and piece of tile is seized. The accused is identified by the witnesses in T. I. P. He has criminal antecedent. If he is released on bail, he will threat the witnesses. Hence, they have prayed for rejection of the bail.

04] Heard the learned counsel for the accused and learned APP. They have argued as per their stand taken as above. The counsel for the accused has relied on the case of **Narayan Ghosh @ Nantu Sankar Adeya vs. State of Orissa reported in Laws (SC)-2008-2-49.**

05] I have gone through application, say, arguments and police papers. There is strong prima-facie case against all the accused. They have committed the offence in furtherance of their common intention. The accused nos. 2 and 3 caught hold the hands of the said deceased and accused no. 1 by means of piece of tile assaulted on his head. It was life threatening injury and the deceased was succumbed to it. The witnesses had seen that all the accused were present at the spot and also assaulted the said deceased by fist and kick blows. The witnesses have identified the present accused in T. I. Parade. The clothes on his person at the time of offence were also seized. There is old enmity between accused no. 1 and the said deceased. If the present accused is released on bail, he will threat the prosecution witnesses. Two different offences are pending against him. The punishment is for death or imprisonment for life. He is the main accused in the crime. Though, charge sheet is filed, but, looking to the above reasoning, he is not entitled for bail. The cited case law of **Narayan Ghosh (supra)** is not applicable to the facts and circumstances of the case. Hence, the following order:

ORDER

Application is rejected.

Date : 17.10.2022

(R. R. Rathi)
Additional Sessions Judge-6,
Nashik.