ORDER

I) The application is allowed.

II) The applicant be released on bail on executing a P.R. bond for Rs.25,000/- and on furnishing a solvent surety in the like amount subject to the following conditions:

a) The applicant shall immediatley leave the territorial limits of the Sessions Sub-Division at Majalgaon, District Beed and shall not re-enter till the conclusion of the trial except for attending the dates in the trial of this case and other cases.

b) He shall furnish his new address and contact numbers to the officer incharge of the concerned police station.

c) He shall not try to contact the informant or the witnesses and shall not tamper the evidence.

III) Bail before the lower Court.

IV) It is made clear that the observations made herein-above are only prima facie and confined to the decision of this application and the trial Judge shall not feel influenced by them

***Result*:-** Application allowed.

ABC 2019 (I) 292 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Mangesh S. Patil, J.)
Bail Application No.1519 of 2018
Decided on 3 January, 2019
Aurangabad Bench

AMOL SHIVAJI CHOURE ***- Appellant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered*:-** ***Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Indian Penal Code, 1860 — Sections 302 — Incident having occurred only on the spur of moment without any pre -meditation— Investigation over— Deceased was aggressor— Statement of witnesses — deceased had fallen to the ground couple of times and was under the influence of liquor — type of weapon — small stick use — No criminal antecedents— Bail granted. (Para 6)

March 2019

Facts:- *As per the prosecution version, the applicant has been running a stall and the deceased had approached him and insisted for serving him with meals. The deceased was drunk. When the applicant refused to entertain him, the deceased insisted. The things flared up. A fight ensued between the two. The applicant allegedly assaulted the deceased with a stick several times, causing multiple injuries of which latter died. In the present application bail was granted.*

Held:- Considering all the above aspects, in my considered view, the incident having occurred only on the spur of moment without any pre-meditation, when the investigation is already over, when the deceased himself was apparently an aggressor, when even the witnesses have stated that the deceased had fallen to the ground couple of times and was under the influence of liquor and when only a weapon like a small stick has been recovered, in the absence of any criminal antecedents, the applicant deserves to be granted bail subject to usual conditions. Hence, I pass the following order :

Counsel:- ***For Appellant(s):*** *U.L.Telgaonka, Mr. N.U.Telgaonkar, Advs.*
For Respondent(s): *Mr. A.S.Shinde, Adv.*

JUDGMENT

MANGESH S. PATIL, J.: - This is an application for bail by the sole accused from Crime No.218 of 2018 registered with Mukundwadi Police Station, Aurangabad, for the offence punishable under Section 302 of the IPC, after filing of the charge-sheet.

2. Briefly stated the prosecution version is to the effect that the applicant has been running a stall and the deceased had approached him and insisted for serving him with meals. The deceased was drunk. When the applicant refused to entertain him, the deceased insisted. The things flared up. A fight ensued between the two. The applicant allegedly assaulted the deceased with a stick several times, causing multiple injuries of which latter died. The FIR was lodged. The offence was registered. The applicant was arrested and in due course of time he was charge-sheeted.

3. The learned advocate for the applicant submits that there was no pre-meditation. The incident had occurred on the spur of moment. The deceased in fact was the aggressor. He had assaulted the applicant on head with a stone. The eye witnesses have confirmed that the deceased had fallen to the ground few times which does not

rule out the possibility of the deceased having sustained head injury of which he had died, as a result of the fall and not due to the injuries caused by the applicant. Only a stick is stated to have been discovered by him. There are no criminal antecedents. The statements of the prime witnesses have already been recorded under Section 164 of the Cr.P.C. Therefore, there is no question of any influence being exerted by the applicant. The applicant may be granted bail since the trial is not likely to get over soon.

4. The learned APP strongly opposes the application. He submits that there are many eye witnesses who have precisely stated about the applicant having assaulted the deceased with a stick multiple times. The deceased had sustained several injuries including fractured ribs as also a fracture on the parieto occipital region. This is sufficient to reveal involvement of the applicant in causing death. Intention can be attributed to him by sheer number of injuries inflicted by him and though there are no criminal antecedents, the offence being punishable up to death, no leniency be shown to the applicant.

5. I have carefully gone through the police papers particularly the statements of witnesses recorded under Section 164 of the Cr.P.C. namely Ashish Suresh Kale and Nikhil Subhash Pardeshi. There is no doubt that these witnesses have apparently seen the incident wherein a scuffle had ensued between the applicant and the deceased which had taken the shape of a fight. More importantly, going by their statements and the statements of few other witnesses, it was the deceased who was apparently the aggressor. He had approached the applicant and had asked him to serve him with omelet and the latter having refused, he had assaulted the applicant and had also kicked his stall. Even the statements of these witnesses would reveal that the applicant had not straight way assaulted the deceased but had merely slapped him apparently with the only object that the deceased would go away. The things seem to have flared up only thereafter when the deceased again assaulted the applicant with a stone and insisted for serving him.

6. Considering all the above aspects, in my considered view, the incident having occurred only on the spur of moment without any pre-meditation, when the investigation is already over, when the deceased himself was apparently an aggressor, when even the witnesses have stated that the deceased had fallen to the ground

couple of times and was under the influence of liquor and when only a weapon like a small stick has been recovered, in the absence of any criminal antecedents, the applicant deserves to be granted bail subject to usual conditions. Hence, I pass the following order :

ORDER

(i) The application is allowed.

(ii) The applicant be released on bail on his executing a P.R. Bond for an amount of Rs.25,000/- and furnishing a surety in the like amount subject to the following conditions :

(a) He shall not tamper the evidence or influence the witnesses.

(b) He shall not get involved in any other crime.

(iii) Bail before the trial court.

***Result*:-** Application allowed.

ABC 2019 (I) 295 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(Bela M. Trivedi, J.)
Criminal Misc. Application No. 2718 of 2012
Decided on 10 December, 2018

AJAYSINH DALPATSINH UMAT ***- Appellant(s).***

Versus

PATEL RAJUBHAI DASHRATHBHAI ***- Respondent(s).***

Law Covered*:-** ***(A) Constitution of India — Article 226 & 227 — Code of Criminal Procedure, 1973 — Section 482 — Quashing of order of issue of process —Indian Penal Code, 1860 — Sections 499, 500, 501 & 502—Press and Registration of Books Act, 1867— Section 7 — Complaint against Resident Editor of a news daily — No allegation against the applicant except describing him as the "Resident Editor" in the cause title of the complaint — much less his knowledge with regard to the alleged defamatory news item published news daily — Held, the complaint even if taken at its face value to be true does not constitute any offence qua the present applicant — proceedings against the owner, publisher and printer already quashed — Application allowed. (Para 11)

March 2019