

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1291 OF 2016

1. Bhaskar s/o Sakharam Mantode,
Age 76 years, Occu. Agri.,

2. Amol s/o Bhaskar Mantode,
Age 36 years, Occu. Agri.,

Both r/o Bhairoba Vasti, Sibalapur,
Taluka Sangamner, Dist.Ahmednagar.. Applicants

Versus

. The State of Maharashtra,
through the Police Inspector,
Ashwi Police Station,
Taluka Sangamner,
District Ahmednagar

.. Respondent

Mr K.N. Shermale, Advocate for applicants
Mr D.V. Tele, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 11th March 2016

PER COURT

Heard.

2. The applicants are seeking regular bail in Crime No.I-75 of 2015 registered at Ashwi Police Station, Taluka Sangamner, District Ahmednagar, for the offences punishable under Sections 302, 504, 506 read with Sec.34 of Indian Penal Code.

3. The prosecution case against the present applicants is that the applicants along with their family members have assaulted the deceased Subhash by stick and fist blows.

4. It is claimed that the incident in question occurred on 6th December 2015 when there incurred differences between the accused persons and the family of deceased Subhash in relation to open space available in courtyard of their houses. It is claimed in the prosecution story that the applicants assaulted deceased Subhash and then pushed him on the wall because of which he suffered head injury resulting into his death on 9th December 2015.

5. In the above background, learned Counsel for the applicants, while trying to make out the case for grant of regular bail would urge that the applicant No.1 is aged about 76 years and it is really unbelievable to accept that the applicant No.1 has given push to deceased Subhash who fell on wall resulting into causing serious head injury, which appears to be cause of his death, as narrated in the post mortem report. He would then submit that the investigation in the matter is complete and the charge-sheet is already filed. According to him, F.I.R. narrates history of enmity between complainant's family and applicants. All the family members of the applicants including aged women are named as accused. Hence, false implication cannot be ruled out.

6. If the overall view of the investigation is taken into account, prima facie it could be inferred that the applicants are not involved in crime in question, as though deceased Subhash suffered injury on 6th December 2015, no convincing explanation is coming forward as to why he was hospitalised on 7th December 2015.

7. Learned A.P.P. opposed the application on the ground that Asha, wife of deceased Subhash and her two daughters are the eye witnesses to the incident who have narrated and attributed specific role to the applicants. Learned A.P.P. then would urge that the cause of death is head injury, which has been caused by the present applicants.

8. In view of prima facie case, learned A.P.P. prays for rejection of the application.

9. With the assistance, I have scanned the charge-sheet.

10. It is required to be noted that there is history of enmity on the basis of dispute between the present applicants and the family of deceased Subhash in relation to use of open space, which is available in their respective courtyards. The said dispute as apparent from the F.I.R. appears to be old one and there used to be regular quarrel in between the family of applicants and deceased Subhash. It is required to be noted that it is claimed by the eye witnesses that the incident in question took place on 6th December 2015, however, deceased Subhash was hospitalised on the next day and the explanation tendered is that the vehicle was not available for shifting him to the hospital. In my opinion, once Subhash had suffered head injury, the explanation that is tendered that since vehicle was not available on phone call and hence, he was not shifted to the hospital, is not believable, when there is government ambulance available and the said fact was to the knowledge of the Police Patil and Sarpanch of the village. Apart from above, the fact was not brought to the notice of Police Patil on the same day, i.e. 6th December 2015.

10. Apart from above, it is required to be noted that the role attributed to the applicants is that of giving push, which has resulted into head injury to deceased Subhash. No use of weapon is attributed, particularly in the matter of cause of death of deceased Subhash. In view of earlier enmity, false implication cannot be ruled out, as entire family including female members are named as accused. In view of above, the intention of the applicants to commit crime is also required to be assessed.

11. Having regard to the fact that applicant No.1 is aged about 76 years and the investigation in the matter is complete and charge-sheet is filed, in my opinion, no fruitful purpose will be served in detaining the applicants in the background of what has been observed herein above. There is no criminal history nor the applicants are likely to run away from the prosecution.

12. As such, Criminal Application stands allowed. The applicants be released on bail in Crime No.I-75 of 2015 registered at Ashwi Police Station, Taluka Sangamner, District Ahmednagar, for the offences punishable under Sections 302, 504, 506 read with Sec.34 of Indian Penal Code, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount, by each of them.

13. The applicant No.2 shall remain outside the jurisdiction of Police Station, Ashwi for six months, but for attending the trial.

(N.W. SAMBRE, J.)