

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

Criminal Application No. 5248 of 2016

District : Parbhani

Munjaji @ Pintu s/o. Sambhaji Gutte,

Age : 27 years,

Occupation : Agriculture &
Private Service,

R/o. Kasarwadi,

Taluka : Gangakhed,

District : Parbhani.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

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*Mr. R.N. Dhorde, Senior Advocate, instructed
by Mr. V.N. Shelke, Advocate, for the applicant.*

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 4TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 215/2015 registered with Police Station, Gangakhed, District Parbhani, for offences punishable under Sections 302, 143, 147, 148, 149, 364, 323, 109 and 201 of the Indian Penal Code, by this application, is seeking his release on bail after filing of the

charge-sheet.

2. Heard the learned Senior Counsel appearing for the applicant / accused. He drew my attention to the FIR lodged by Kushabai w/o. Dashrath Mundhe, at about 11.00 a.m. on 27.07.2015 leading to registration of the crime in question. Then, by taking me through the spot Panchanama recorded at 07.30 a.m. of that day, the learned Sr. Counsel argued that this spot Panchanama which is recorded prior to the registration of the FIR, shows use of iron rod, stones and sticks in committing the crime. With this, the learned Sr. Counsel argued that the possibility of false implication of the applicant in the crime in question, due to political rivalry, cannot be ruled out. There was no cause with the Police Officer to mention weapon of offence in the spot Panchanama when FIR itself was not registered by that time. The learned Sr. Counsel further argued that similarly situated accused persons, about nine in numbers, are released on bail by the learned Addl. Sessions Judge and the application moved for cancellation of their bail is rejected by this Court, meaning thereby, that order of release of similarly circumstanced accused is confirmed by this Court. With this, the learned Sr. Counsel argued that by rule of parity, present applicant is also entitled to be released on bail. The learned Sr. Counsel, by drawing my attention to the order granting bail to

the similarly circumstanced accused, has pointed out that the reasons which weighed the learned Addl. Sessions Judge and which are confirmed by this Court, are delay in lodging the FIR, possibility of false implication of the accused and the fact that the investigation of the crime in question is over.

3. The learned Addl. Public Prosecutor opposed the application by contending that the crime in question is serious and there are eye witnesses to the incident in question.

4. Perused the charge-sheet. The FIR of the crime is registered on the basis of report lodged by Kushabai Mundhe - mother of deceased Ram @ Balu Dasharath Mundhe, on 27.07.2015 at about 11.00 a.m. The incident in question, according to the prosecution case, took place in the night intervening between 26.07.2015 and 27.07.2015 and precisely at about 02.15 a.m. to 02.30 a.m.

5. According to the prosecution case, because of assault by accused persons including the present applicant, Ram @ Balu Mundhe died and his dead body was found outside the gate of Government Hospital at Gangakhed. Perusal of the report of post mortem examination of Ram @ Balu Mundhe shows that he suffered most painful death in most brutal manner. His dead body was found to be having 31 ante mortem

injuries which were inclusive of contused lacerated wound, several fracture injuries and abrasions. His all limbs and the head were found to be fractured. Obviously, the death is homicidal.

6. It appears that the intimation of death of Ram @ Balu Mundhe was received by Police on finding his dead body by Lala @ Sanjay Anawade at about 05.00 a.m. of 27.07.2015. This appears to be cause of drawing spot Panchanama at about 07.00 a.m. The spot Panchanama itself shows that it was recorded in presence of Panch witnesses in pursuance of Station Diary entry 09/2015. In this view of the matter, non-lodgment of FIR, by that time, pales into insignificance. Even otherwise, stray lapses on the part of the investigator should not met with consequences of damaging the prosecution case. Be that as it may, spot Panchanama recorded at 07.00 a.m. shows that dead body was found with injuries and stones with blood stains, iron rods, pair of Chappal, etc. lying on the spot which was near the Government Hospital of Gangakhed. The spot Panchanama as such cannot cast shadow of doubt on the prosecution case.

7. The motive attributed by the prosecution for committing murder of Ram @ Balu Mundhe is Grampanchayat election. Chapter IX is added to the Constitution in order to strengthen Panchayat Raj institutions. Without free and fair elections, there

shall not be any difference between the democracy and dictatorship. According to the prosecution case, as against established political outfit of accused Laxman Mundhe, deceased Ram @ Balu Mundhe had dared to fill in nomination papers of 7 candidates in Grampanchayat election and out of those 7, his three candidates are stated to have been declared elected. This was the cause, according to the prosecution case, to commit murder of Ram @ Balu Mundhe by accused persons including the present applicant and co-accused Laxman Mundhe.

8. Report lodged by the informant - mother of the deceased shows that in the night hours of 26.07.2015, she went for sleeping in the house of her nephew Bhagwat. Dhanraj, Rani and Dnyaneshwari are other inmates of house of Bhagwat. Deceased Ram @ Balu Mundhe was sleeping in another house. The informant reported that in the night at about 02.00 a.m. of 27.07.2015, her son Ram @ Balu Mundhe (since deceased) came to house of Bhagwat where she was sleeping, woke up her and told that lot of persons had gathered outside and she should be on alert while sleeping. Then immediately within 15 minutes, at about 02.00 a.m. to 02.30 a.m., she heard shouts of her son Ram @ Balu to the effect that he should not be beaten. The shouts were coming from the side of Maroti temple. The informant further reported that she herself, Bhagwat and Dhanraj went there. She saw

that co-accused and present applicant Pintu Gutte were assaulting Ram @ Balu by means of sticks and iron rods. As per her version, co-accused Laxman Mundhe was instigating accused persons and he had also instigated them to beat Dhanraj and Bhagwat. The informant reported that accused Bandu Tandale gave stick blow to witness Dhanraj and therefore Dhanraj and Bhagwat ran away from the spot. The informant further reported that accused persons then took Ram @ Balu in four wheeler of accused Laxman Mundhe. She stated that she was frightened and therefore stayed at the house thereafter. In the morning at about 05.30 a.m., she came to be know that dead body of her son is lying in front of Government Hospital by road side. She therefore went to the spot and saw dead body of her son at the hospital.

9. FIR itself shows that Bhagwat and Dhanraj are witnesses to the incident in question. Statements of Bhagwat and Dhanraj are in unison with the statement of the informant - mother of the deceased. They have categorically stated the mode and manner of assault on Ram @ Balu by accused persons including the present applicant. Dhanraj Mundhe is one of the witnesses who suffered injury in the incident at the hands of co-accused Bandu Tandale. Injury certificate of Dhanraj Mundhe is at page 164 of the paper-book. It is well settled that injured witnesses are stamped witnesses whose

presence cannot be doubted as they themselves being victim of the crime in question and at this stage, it is impossible to discard version of Dhanraj Mundhe, implicating the applicant in the crime in question. Apart from this, Dnyaneshwari Murkute, Rani Mundhe and Ranjana Mundhe are stating to have seen the incident from roof of the house. Their supplementary statement shows that on the day of the incident, during whole night, lights in the village were on and they had witnessed the incident of assault on Ram @ Balu in the light of the temple.

10. Mahadev Murkute is another witness who actually went to the spot and saw the present applicant assaulting deceased Ram @ Balu. This voluminous evidence account cannot be jettisoned at this stage, by surmises and conjunctures to the effect that because of distances from the spot of the incident, there is possibility of the witnesses not witnessing the incident. That apart, informant Kushabai Mundhe, Dhanraj Munde, Bhagwat Mundhe and Mahadev Murkute are witnesses who had actually visit the spot of the incident and then ran away because of assault by accused persons on them.

11. The learned Addl. Sessions Judge observed that version of prosecution witnesses is doubtful. It is well settled that a reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a

fair doubt based upon reason and common sense. It must grow out of the evidence in the case. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence. The test required to be applied is a test of prudent person as seen from Section 3 of the Evidence Act which defines a term 'proof'. Valuable guidance can be taken from the ruling of **Krishnan & another Vs. State represented by Inspector of Police** [(2003) 7 SCC 56] and **State of Haryana Vs. Bhagirath & others** [(1999) 5 SCC 96]. For these reasons, I refuse to endorse the line of thinking by the learned Addl. Sessions Judge at pre-trial stage in releasing co-accused on bail.

12. After the assault, version of witnesses is to the effect that Ram @ Balu was abducted by four wheeler vehicle by accused persons. Immediately thereafter his dead body was found near outside Government Hospital at Gangakhed. This happened in few hours. The deceased as such was lastly in company of the applicant as well as co-accused. Time gap between the deceased found alive in company of the applicant and the co-accused and that he was found dead, is so short that possibility of entering third person in the scene is impossible. This was with a prior history of assault.

13. In this view of the matter, complicity of the applicant in commission of serious offence is established. No case for bail is as such made out because the offence is punishable with death or imprisonment for life.

14. In the result, the Application is rejected.

15. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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