

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

DISTRICT : JALGAON

919 CRIMINAL APPLICATION NO. 5507 OF 2017

MAKRAND GOPAL DHARMADHIKARI & ANR.

VERSUS

THE STATE OF MAHARASHTRA

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Mr. V.B.Patil, Advocate for Applicants.

Mr. S.Y.Mahajan, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 7 th DECEMBER, 2017

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ORAL ORDER :

1. The applicants who are lying arrested in connection with the offence u/s 302 r/w 34 of the Indian Penal Code registered vide Crime No. 96/2016 at Dharangaon police station, Tq. Dharangaon, District Jalgaon preferred this application seeking release on bail.

2. Heard the learned counsel for the applicants and A.P.P. for the respondent - State. Perused the

charge sheet as well as the order passed by the learned Additional Sessions Judge rejecting the application for bail.

3. In short, it is the contention of the learned counsel for the applicants that there is no evidence as such to establish the complicity of the applicants in commission of offence u/s 302 of I.P.C. By referring postmortem report and subsequent opinion obtained from the autopsy surgeon, it is contended that there is no conclusive evidence to prima facie show that the deceased died a homicidal death. By referring the evidence as gathered by the prosecution, learned counsel submits that there is no evidence to show that the deceased was assaulted by the applicants and that too with intention to commit his murder. It is pointed out that the deceased was un-sound mind person. The entire case of the prosecution is based upon the suspicion expressed by the informant on the basis of disclosure made by Jyoti Bachulal Gujrathi, whose statement was recorded on 02/09/2016 i.e. much after the death of the deceased. By referring the statement of Jyoti, it is pointed out that the witness has not stated in her statement that she had seen the applicant assaulting deceased Abhay. She has only stated that on 29/06/2016 at about 10.00 to 10.15 p.m.

after taking dinner, when she was proceeding to bed, she heard shouts from outside her house. She noticed one person running from the house of Gangadhar Pawar i.e. the informant and further seen the present applicant abusing and chasing that person. Thus, by referring the statement of witness, which is relied to establish the complicity of the applicant in commission of the offence, learned counsel submits that the statement made no way establish the complicity of applicants in the commission of offence and more particularly the alleged assault on deceased. It is further pointed out that as per the statement recorded during the course of investigation, it was transpired that on 29/06/2016, the deceased in the state of un-sound mind went to the house of applicant No. 2 while his wife Manisha and daughter were alone present in the house. The deceased banged and tried to open the door to make forcible entry in the house. Therefore, the wife of applicant No. 2 made phone call to her husband and disclosed said fact to him. He advised not to open the door and asked her to wait. Later-on, her husband came to the house. As soon as the deceased saw applicant No. 2, he started running from the lane. In this back-ground, learned counsel submits that even if we go by the prosecution case, then by no stretch of imagination it can

not be said that the applicants had assaulted the deceased with intention to commit his murder. It is further pointed out that as per the note taken in the Rural hospital, Dharangaon the deceased was admitted by witness Tushar with diagnosis as 'Alcoholic severe and in depression'. It is further pointed out that as per the autopsy surgeon's opinion, the cause of death beside head injury is shown as Pneumonia. In response to the query report, Autopsy surgeon stated that no injury found to be caused to head of deceased. Learned counsel submits that the applicants have no criminal antecedents. In the event of release of the applicants on bail, there is no likelihood that he will flee away to avoid process of law.

4. On the other hand, learned A.P.P. opposed the application with contention that there is prima facie case against the applicants. By referring the statement of Jyoti Gujrathi, learned A.P.P. submits that on the day of incident, she had seen the accused chasing the person who was subsequently discovered to be the deceased. He further submits that pursuant to the memorandum statement recorded u/s 27 of the Indian Evidence Act, stick used in commission of offence was recovered at the instance of accused No. 2. He further

submits that witness Alkabai Mahajan too narrated the incident which was occurred on 29/06/2016 out side the house of accused No. 2. She has stated that the applicants had assaulted the deceased. He further submits that as per the postmortem report, cause of death is shown as head injury as well as Pneumonia. In this back-ground, learned A.P.P. submits that the application filed by the applicants be rejected.

5. On due consideration of the submissions advanced in the light of overall facts of the prosecution case and evidence gathered to prosecute the accused, I am of the view that the case is made out to enlarge the applicants on bail. As discussed, there is no conclusive evidence to establish that the deceased died a homicidal death. The opinion given by the autopsy surgeon raises doubt as to the cause of death of the deceased. Apart from the doubt as regards the cause of death of deceased, there is no evidence to attribute motive on the part of the applicants to murder the deceased. If the entire case of the prosecution is taken into consideration, still it make out no case to show that the applicants were carrying any strong motive to commit murder of the deceased. The deceased is alleged to have been assaulted by stick. He

died about sixteen days after the incident. Except statement of one witness whose statement was recorded after more than three months of the incident, there is no evidence to show that the applicants had assaulted deceased that too with intention to kill him. Although the death of the deceased is claimed to be due to head injury, the autopsy surgeon opined that no such injury found over the head of deceased. If we consider the statement of other witnesses, it transpires that on the day of incident i.e. 29/06/2016 at about 10.00 p.m., the deceased went to the house of applicant No. 2 and banged over the door. The wife of applicant No. 2 who was alone in the house with her child made phone call to her husband and informed the said fact to deceased. He advised her not to open the door. He reached to his house. The witness who is claimed to be eye witness also corroborate the version of the wife of applicant No. 2. It is only stated that the applicants chased the deceased, who was un-sound mind. The deceased was admitted in Rural hospital as he was found lying near bus stand. If we consider the successive statement made by the informant, then the informant was carrying grudge against the applicants on account of previous dispute. The investigation is completed. The charge sheet is already filed. The applicants are lying in

jail since 20/07/2017. The applicants have no criminal antecedents. In this view, I am inclined to allow the application.

6. It is clarified that the observations as made above are made for the limited purpose of deciding the present application and none of the observations made be treated as expression of view of this Court as to merit of the case of prosecution.

ORDER

1. The application is allowed.
2. Applicant No. 1 Makrand Gopal Dharmadhikari and applicant No. 2 Vinayak Shivdas Mahajan lying arrested in Crime No. 96/2016 registered at Dharangaon police station, Tq. Dharangaon, District Jalgaon for committing offences punishable u/s 302 r/w 34 of the Indian Penal Code be released on bail on their furnishing bail in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand] each with one surety in like amount on following conditions.

[i] The applicants shall not indulge in the act of

tampering of prosecution witnesses.

[ii] Pending disposal of trial, the applicants shall appear and record their appearance before the officer in-charge of police station Dharangaon, Tq. Dharangaon, District Jalgaon on last day of each month in between 10.00 to 11.00 a.m.

[iii] The applicants shall furnish the names and address of their three close relatives with their phone numbers.

[iv] The applicants shall not indulge into the offence of similar in nature.

3. In the event of breach of any of the conditions, bail granted to the applicants is liable to be cancelled.

4. Bail to be furnished before the trial Court.

5. The application is disposed of in above terms.

[V.L.ACHLIYA, J.]