

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 BAIL APPLICATION NO. 1231 OF 2020

1. GAJENDRA @ GAJESINGH MAKATYA PADAVI
2. KISAN MAKATYA PADAVI
VERSUS
STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Nitin Bhadane
APP for Respondent-State : Mr. A. A. Jagatkar

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CORAM : V. K. JADHAV, J.
DATED : 21ST DECEMBER, 2020

PER COURT :-

1. I have heard learned counsel for the applicants for some time. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no. 1 Gajendra @ Gajesingh Makatya Padavi. Leave granted. The application of applicant no.1 Gajendra @ Gajesingh Makatya Padavi is disposed off as withdrawn.

2. The applicant no.2 Kisan Makatya Padavi is seeking regular bail in connection with Crime No. 63 of 2020 registered with Dhadgaon Police Station, District Nandurbar

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for the offence punishable under Section 302 read with 34 of IPC. His application below Exhibits 3 and 4 in Sessions Case No. 32 of 2020 with similar prayer came to be rejected by the Additional Sessions Judge, Shahada vide order dated 09.09.2020.

3. Learned counsel for the applicants submits that the investigation is over and the charge sheet has been submitted. Though name of applicant no.2. Kisan is mentioned in the FIR, general allegations have been made against him along with co-accused persons and the allegations have been made mainly against co-accused Gajendra whose application seeking regular bail came to withdrawn today. Learned counsel submits that it has been alleged in the complaint that co-accused Gajendra has used an iron pipe in the assault and inflicted injuries with the help of said iron pipe on the body of the deceased. Learned counsel submits that the postmortem report, particularly column no. 17, corroborates those injuries as alleged against co-accused Gajendra. Learned counsel submits that the

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incident, as alleged, seems to have taken place as of sudden without any premeditation. The incident had taken place on account of a dispute in respect of plantation of teek tree. There is no criminal history. Applicant no.2 is having a fixed place of residence and is easily available for trial. Applicant no.2 may be released on bail.

4. Learned APP has strongly resisted the application of applicant no.2 on the ground that name of applicant no.2 is mentioned in the FIR with a specific role attributed to him. Even there are injuries as elaborated in column no.17 of the postmortem report which corroborate the allegations made against applicant no.2. Applicant no.2 has used a wooden log in the assault and the said weapon came to be recovered from him at his instance by drawing panchanama under Section 27 of the Evidence Act. *Prima facie* there is strong case against applicant no.2. Applicant no.2 may not be released on bail.

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5. On going through the allegations made in the complaint and on perusal of the charge sheet, though I find name of applicant no.2 mentioned in the FIR, however, allegations have been made mainly against co-accused Gajendra (applicant no.1 herein), whose application seeking regular bail came to be withdrawn today. So far as applicant no. 2 is concerned, there are general allegations against him. It has been alleged that applicant no.2 along with his two minor daughters, assaulted the deceased with the help of a wooden log. However, there are specific allegations against co-accused Gajendra that he has used iron pipe and inflicted injuries on head, two legs and left ear of the deceased. I have carefully perused column no.17 of the postmortem report. It appears that so far as the allegations made against co-accused Gajendra are concerned, those are corroborated by the injuries as detailed in column no.17 of the postmortem report. Thus, considering the entire aspect of the case and since the incident had taken place as of sudden without any premeditation, I am inclined to grant bail to

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applicant no.2 by considering his individual act. Hence, following order.

ORDER

- I. The application is hereby partly allowed.
- II. The applicant no. 2 KISAN MAKATYA PADAVI be released on bail in connection with Crime No. 63 of 2020 registered with Dhadgaon Police Station, District Nandurbar for the offence punishable under Section 302 read with 34 of IPC, on his furnishing P.B. of Rs.20,000/- with one solvent surety of the like amount on the condition that the applicant shall not tamper with the prosecution evidence in any manner.
- III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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