

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

29 BAIL APPLICATION NO.1410 OF 2020

1. Mangesh s/o Somnath Swami
Age : 23 years, occ : education
2. Sagar s/o Somnath Swami
Age : 20 years, occ : education

Both r/o Hatte Nagar, Road No.5,
Latur, Tal. and Dist. Latur.

Applicants

Versus

The State of Maharashtra
Through Police Officer,
Gandhi Chowk Police Station,
Latur, District Latur.

Respondent

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Mr. P.P. More, Advocate for the applicants.
Mr. A.S. Shinde, A.P.P. for respondent / State.

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CORAM : V.K. JADHAV, J.

DATE : 07.12.2020

ORDER :-

1. The applicants are seeking regular bail in connection with Crime No. 266 of 2020 registered with Gandhi Chowk Police Station, Latur for the offences punishable under Sections 302, 452 read with Section 34 of the Indian Penal Code. His Criminal Bail Application No. 466 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Latur vide order dated 12.11.2020.

2. Heard both sides.

3. The learned Counsel for the applicants submits that the investigation is over and charge-sheet has been submitted. Both the applicants are real brother *interse* and they are college going students. Bonafide certificates to that effect are annexed with the application. Learned Counsel submits that both the applicants are in jail in connection with the present crime since 03.08.2020. Learned Counsel submits that as alleged in the complaint, deceased Khandu was suffering from some mental illness, and therefore, the informant alongwith her younger son Balaji started residing in the field. It has further alleged in the complaint that on 01.08.2020 father of the present applicants namely Somnath Swami has complained to the informant that deceased Khandu had caused damage to their motorbike by pelting stones on it and thus requested them to give understanding to deceased Khandu and also compensate him.

4. Learned Counsel submits that the incident allegedly taken place on 02.08.2020 at about 9 a.m. Both the applicants allegedly extended beatings to deceased Khandu with the help of stick. Learned Counsel submits that only one Ramesh Raimal is an eye witness to the said incident, as claimed by the prosecution. Deceased Khandu was beaten in

his house itself and the said witness Ramesh when visited the house of deceased Khandu, he found him alive. Deceased Khandu was taken to the hospital where he succumbed to the injuries on the next day. Learned Counsel submits that hardly there was any murderous intention on the part of the applicants. There is no criminal history. Both the applicants are having their roots in the society. They are available for trial. The applicants are ready to abide the conditions if imposed by this Court while enlarging them on bail. Applicants may be released on bail.

5. The learned A.P.P. has strongly resisted the application on the ground that there is an eye witness to the incident. Deceased Khandu was subjected to beatings by both the applicants with the help of stick. Learned A.P.P. submits that as per postmortem report, deceased had sustained as many as five external injuries and cause of death is "shock due to multiple injuries". Learned A.P.P. submits that on earlier day of incident deceased Khandu had caused extensive damage to the motorcycle of the applicants' father and in consequence thereof both the applicants had extended beatings to the deceased. It is for the trial Court to consider the murderous intention, if any, on the part of the applicants. Prima facie there is a strong case against both

the applicants. Application may be rejected.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet, though I find names of the applicants mentioned in the F.I.R. and though there is an eye witness to the incident, however, both the applicants are college going students having no criminal history. At present investigation is over. Charge-sheet has been submitted.

7. It appears that on 01.08.2020 deceased Khandu, who was suffering from mental illness, had caused extensive damage to the motorbike of the father of applicants. It has been stated in the complaint itself that the informant alongwith her younger son left the house because of the usual trouble of deceased Khandu and started residing in the agricultural field. It further appears that on 02.08.2020 both the applicants allegedly extended beatings to the deceased with the help of stick and there is an eye witness to the said incident. On careful perusal of the postmortem report, particularly Column-17, it appears that first two contusions are on the forearm and third contusion is on left leg. The fourth contusion is on left knee joint. The fifth external injury is puncture wound on the left hand. I have carefully gone through Column – 19 of the postmortem report. There

are no injuries under the scalp. Skull was also found intact. There was no fracture. No injury was found on the brain. Meninges also found intact.

8. However, even considering the contusions as referred above mentioned in Column-17 alongwith internal injuries, prima facie it is difficult to accept the cause of death due to multiple injuries. Apart from this, because of the earlier incident if both the applicants have extended beatings to the deceased with the help of stick, on perusal of the memorandum and seizure panchnama for recovery of stick at the instance of applicant No.1 Mangesh, it appears that one small stick having length of 22 inch came to be recovered at his instance by drawing panchnama under Section 27 of the Indian Evidence Act. Thus, considering the nature of the injuries and the weapon allegedly used in the assault, prima facie I found no murderous intention on the part of the applicants. Applicants are college going students. There is no criminal history. I am thus inclined to release both the applicants on bail by imposing some conditions. Hence, the following order.

ORDER

1. The application is hereby allowed.

2. Applicant No.1 Mangesh s/o Somnath Swami and applicant No.2 Sagar s/o Somnath Swami in connection with Crime No. 266 of 2020 registered with Gandhi Chowk Police Station, Latur, District Latur for the offences punishable under Sections 302 and 452 read with Section 34 of the Indian Penal Code, be released on furnishing personal bond of Rs.20,000/- (Rupees Twenty Thousand only) each with one solvent surety each of the like amount, on the following conditions :

(i) The applicants shall not tamper with the prosecution evidence in any manner.

9. Application is accordingly disposed of.

(V.K. JADHAV, J.)