

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

912 BAIL APPLICATION NO.85 OF 2021

TAI @ GEETA W/O RAJU CHAVAN AND ANR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.S. Ghanekar, Advocate for applicants

Mr. S.Y. Mahajan, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11th FEBRUARY, 2021.

PER COURT :

1 Present applicants have been arrested on 23.09.2020 in connection with Crime No.393/2020 registered with Kannad Police Station, Dist. Aurangabad, for the offence punishable under Section 302, 326, 324, 323, 506 read with Section 34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard Learned Advocate Mr. N.S. Ghanekar for applicants and learned APP Mr. S.Y. Mahajan for the respondent. In order to cut short it can be said that both of them have made submissions in support of their

respective contentions.

3 At the outset, it is to be noted that the investigation appears to be completed and the charge sheet has been filed, therefore, the physical custody of the applicants is not required for the purpose of investigation. It is now, therefore, required to be seen, as to what evidence has been collected against the present applicants, who are mentioned as accused Nos.2 and 3. As per the First Information Report, the applicants were proceeding from the road from the land of the informant at about 06.15 p.m. on 22.09.2020 along with the other two accused persons. Thereafter, there was altercation between elder brother of the informant and accused No.1. Informant also reached there along with his another brother Suresh. Accused No.1 was threatening them and giving abuses. In the meantime, it is stated that the child in conflict with law had assaulted elder brother Kisan with axe on his head. Present applicant Nos.1 and 2 had also assaulted Kisan and then, when the informant Machchhindra went to rescue Kisan, applicant No.1 gave blow on the head of informant Machchhindra from the back side by means of axe. Applicant No.2 had also given blow on his back by axe. He then says that his brother Suresh was assaulted by accused No.1 with axe on his head. He fell down and thereafter the accused No.1 had assaulted deceased Suresh on his chest with the handle of the axe. It is stated that Suresh's wife

Shobhabai intervened and she was assaulted by the child in conflict with law on her head and by present applicant No.2 on her shoulder by axe. Suresh was taken to hospital, however, he was declared dead. Thus, the role attributed to the present applicants is that they had assaulted the informant Machchhindra by axe, so also, to Shobhabai by present applicant No.2 with axe on her shoulder. The medical certificates show that Shobhabai had sustained head injury, however, the probable weapon i.e. shown as hard and blunt object and the nature of the injury is stated simple. The injury report of the informant Machchhindra shows that he had 2 Contused Lacerated Wounds; one on upper part and another is on left occipital region. Both are stated to be by hard and blunt object and the nature of injury is stated to be simple. Therefore, the question arises, as to whether they were possible by a sharp weapon like axe. Though the Medical Officer is opining that it is possible but then contents of the injury certificate specifically stated as hard and blunt object. There is recovery of the axe under Section 27 of the Indian Evidence Act; one axe by applicant No.1 gives the description that the blade had sharp edge and another axe is recovered by accused No.1. There appears to be no recovery of one more axe from applicant No.2. The First Information Report paints a picture that all the four accused were having four different axe. However, only two have been recovered.

4 The another brother of informant i.e. injured Kisan and injured Shobhabai have given the same account, as has been given in the FIR. However, statements of two witnesses i.e. Kiran Bhausaheb Rathod and Mukesh Madan Rathod give some different picture. No doubt, Mukesh Rathod appears to have passed the informant and the accused and he has only marked their presence. He came to know about the actual assault and death of Suresh after he went home. Witness Kiran Rathod states that the informant party was aggressive and then he says that he had seen the accused No.1 assaulting Suresh with accused. Presence of present applicants has been stated, however, he does not say about alleged assault by the applicants. Therefore, taking into consideration this ocular evidence, which is collected by the investigating agency, injury certificates, it can be seen that the act of assault of deceased Suresh was by other accused persons. Though the present applicants have been arrayed under Section 34 of the Indian Penal Code, it is then required to be proved that there was such common intention, and therefore, the application deserves to be allowed, however, with stringent condition. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Tai @ Geeta w/o Raju Chavan and 2) Arti d/o Raju Chavan, who have been arrested, in connection with Crime No.393/2020 dated 22.09.2020 registered with Kannad Police Station, Dist. Aurangabad, for the offence punishable under Section 302, 326, 324, 323, 506 read with Section 34 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 They shall not enter the jurisdiction of village Garada, Tq. Kannad till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number to the Trial Court as well as concerned Police Station. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal

Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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