

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.134 OF 2021

- 1) Ajay s/o Dhavji Chavan
Age: 19 Yrs., ocu. Education
- 2) Arjun s/o Dhavji Chavan,
Age: 27 Yrs., ocu. Unemployed
- 3) Vinayak s/o Dhavji Chavan
Age: 29 Yrs., occu. Service.

All R/o Gadadgavhan Tanda,
Tq. Jintur, District Parbhani. = **APPLICANTS**

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Stlation, Jintur,
Tq.Jintur, Dist. Parbhani. = **RESPONDENTS**

Mr.GS Shete,Advocate for Applicants;

Mr.NT Bhagat,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 22nd February, 2021.

PER COURT :-

1. The applicants have been arrested by Jintur police station District Parbhani in connection with CR No.232/2020 dated 25.5.2020 for the offences punishable under sections 302, 326, 324, 143, 144, 147, 148, 149 of IPC and under Sections 135 of Maharashtra Police Act and under Section 51(b) of Disaster Management Act, 2005.

(2)

Now, the investigation is over and charge sheet has been filed before learned JMFC, Jintur vide RCC No.159/2020. The applicants are shown as accused Nos.1 to 3 therein. They by this application pray for bail under Section 439 of Cr.P.C. Their earlier application bearing Bail Application no. 539/2020 was dismissed as withdrawn by this Court on 16.7.2020, which was prior to filing of the charge sheet. Now, as aforesaid, the investigation is over and, therefore, once again, the applicants are before this court after rejection of their Bail Application, under Section 439 of Cr.P.C. by the learned Additional Sessions Judge, Parbhani on 15.12.2020.

2. Heard learned Advocate Mr.GS Shete appearing for the applicants and learned APP Mr. NT Bhagat for Respondent - State.

3. It has been submitted on behalf of the applicants that now the investigation is over and charge sheet is filed, therefore, physical custody of the applicants is not required. Certain other co-accused have been granted bail by this Court and, therefore, on the ground of parity also, the applicants deserve to be released on bail. Perusal

(3)

of the FIR would show that the present applicants are stated to have used an iron rod and stick. Those weapons have been seized. The fact that is required to be noted is that the informant and deceased are residents of Kehal Tanda Tq. Jintur District Parbhani; whereas present applicants are residents of Gadadgavhan Tanda, Tq.Jintur, Dist. Parbhani, which is at a distance of about 20 kms. The place of offence is the house of the present applicants and the time of incident is 9.00 pm. Though, the informant states that he, along with his father, uncle and cousin brother, went to the house of the applicants, in order to persuade them, who were raising objections and creating hurdle when children were playing, it can be seen that, in fact, the informant and others had attacked the applicants and the relatives. The applicants and the relatives have also sustained injuries in the said incident. Further, the incident took place on 14.5.2020 at 9.00 pm. However, the FIR came to be lodged on 25.5.2020 after death of the father of the informant on 24.5.2020. The inordinate delay caused in lodging the FIR has not been explained by the informant. The applicants are ready to abide by

(4)

the terms of the bail. It was also pointed out that the injured persons have received only simple injuries.

4. Learned APP strongly objected the application and submitted that as regards present applicants are concerned, specific role has been attributed. There are many eye-witnesses to the incident. The delay appears to be not fatal. The discovery of the weapons is at the instance of the present applicants. In all, four persons have been injured and one has expired in the incident. The post-mortem report shows that the deceased had received four injuries. Taking into consideration the previous dispute, possibility of commission of similar crime after release of the applicants, cannot be ruled out.

5. At the outset, it can be seen that there appears to be delay in lodging the FIR. Every delay may not be fatal, if it is explained properly. Now, whether the delay that is caused in this case, would be fatal to the prosecution story or not, would be considered by the Trial Court at the end of the trial. However, the fact that is required to be noted is that some incident had taken place

(5)

at about 7.30 pm on 14.5.2020 and it is on account of game. The informant then says that, his uncle had sorted out the dispute. It can be seen that in that dispute, the informant was not present. His cousin brother – Vaibhav was present. Vaibhav gave phone call to the informant and thereafter the informant, along with his father, went to Gadadgavhan Tanda on motorcycle. It appears that thereafter they were joined by uncle and cousin brother Vaibhav. The informant then states that all of them had gone at about 9.00 pm to persuade the accused persons. The question arose when the incident had taken place at 7.30 pm and the dispute was sorted out by uncle Devidas. At that time itself, what was the occasion for the informant and others to persuade once again the accused persons at about 9.00 pm, that too by going to their village, is a question. The informant states that he was assaulted by applicant No.3 and when his father came to rescue him, applicant No.3 had assaulted father with iron rod on his head. Applicant No.2 had then given blow of iron rod in the head of father from back-side and applicant No.1 had assaulted by wooden stick near left eye.

(6)

Father – Vishwanath is the deceased. If we peruse his post mortem report, it states about four injuries which are stated to be ante-mortem. Definitely it requires explanation from the medical officer for the simple reason that the incident had taken place on 14.5.2020 and deceased expired on 24.5.2020 i.e. after ten days of the treatment and column No.17 states that there were four injuries and three injuries out of those four, were stitching injuries and the 4th is the Therapeutic tracheostomy wound over front of the neck in the mid-line. Definitely, this 4th injury appears to be out of surgery that have been required to be made. Still the Medical Officer says that those injuries are ante-mortem. No doubt, there appears to internal injuries, described in column no.19, however, the cause of death that is given is, - "septicemia due to head injury". Definitely there could be many causes for septicemia and, therefore, whether the injuries, those were caused to the head, in fact, were with intention to commit murder or not, will have to be considered on the basis of the evidence that would be led. At this stage, observation can be made that it requires

explanations.

6. The informant has further stated that his uncle – Devidas was assaulted by applicant No.3 by iron rod in his hand. Applicant No.2 had assaulted him on his head with stone and applicant No.1 had assaulted by stick. Cousin brother – Vaibhav was assaulted by applicant No.3 and accused – Sarika on his head by stone. Accused – Sahdev had assaulted Vaibhav by iron rod on the left eye. The informant was assaulted by applicant No.2 and accused Akshay by stone. He was assaulted by accused – Karan and Dhavaji. Karan had assaulted the informant by rod on his head. If we peruse the Medico-legal certificates, it can be seen that even deceased Vishwanath's injuries have been categorized as 'simple' in nature. Only injured Devidas has received one grievous injury at zygomatic area. It is in the nature of contusion. But, then further medical papers appear to be not on record in the charge sheet. Though Vaibhav and informant – Umesh have received only one injury, i.e. CLW over scalp, but nature of the injury is 'simple'. It appears that in the charge sheet Medico-legal certificates of the accused have also been produced. Under such

(8)

circumstance, though there appears to be eye-witnesses, giving the same account; yet the Medico-legal Certificates speak something else. Therefore, taking into consideration these aspects and the evidence that is collected, the applicants deserve to be released on bail, which would be similar to the co-accused. Hence, following order

-

ORDER

- i. The applications is hereby allowed;
- ii. The applicants – 1) Ajay s/o Dhavji Chavan; 2) Arjun s/o Dhavji Chavan and 3) Vinayak s/o Dhavji Chavan, who have been arrested in connection with CR No.0232/2020 dated 25.5.2020 registered with Jintur police station, District Parbhani for the offences punishable under Sections 302, 326, 324, 143, 144, 147, 148, 149 of IPC and under Sections 135 of Maharashtra Police Act and under Section 51(b) of Disaster Management Act, 2005, be released on their furnishing PR bond of Rs.20,000/- each with one solvent surety each in the like amount.
- iii. The applicants shall not tamper with the evidence of the prosecution in any manner, nor shall they indulge in any criminal activities.
- iv. The applicants shall not enter within

(9)

the limits of village Kehal Tanda, Tq. Jintur, District Parbhani till filing of charge sheet and they should reside elsewhere and before submission of the bail papers, the applicants shall give complete addresses of their proposed residence with mobile numbers.

v. The applicants shall comply with the requirements under paragraph No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vi. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV