

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.80 OF 2021

CHANDRAKALA SURYAJI @ SURESH YADAV
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. J. Salunke, Advocate for applicant.
Mr. S. B. Narwade, APP for the respondent.

...
WITH
CRIMINAL APPLICATION NO.340 OF 2021
IN BA/80/2021

MAHESH GOVIND YADAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. N. S. Salunke, Advocate for the applicant.
Mr. S. B. Narwade, APP for respondent No.1.
Mr. S. J. Salunke, Advocate for respondent No.2.

...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 18th March, 2021
Pronounced on : 6th April, 2021

ORDER :-

. Criminal Application No.340 of 2021 filed by the original informant for assisting public prosecutor is allowed and disposed of.

2. Present applicant is original accused No.3, who came to be arrested on 03.07.2020 in connection with Crime No.202 of 2020 registered with Naldurg Police Station, Dist. Osmanabad for the offences punishable under Sections 302, 307 read with 34 of Indian Penal Code.

She has filed present application for bail under Section 439 of the Code of Criminal Procedure.

3. It will not be out of place to mention here that earlier the applicant had come before this Court by filing Bail Application No.883 of 2020, however, it was got withdrawn on 07.09.2020 with liberty to file fresh application after charge-sheet is filed. Thereafter, the charge-sheet has been filed on 01.10.2020.

4. Heard learned Advocate Mr. S. J. Salunke for the applicant and learned APP Mr. S. B. Narwade for respondent – State assisted by learned Advocate Mr. N. S. Salunke representing the original informant.

5. The First Information Report has been lodged by one Mahesh Govind Yadav, who is resident of Tuljainagar, Tq. Tuljapur, Dist. Osmanabad, however, he originally belongs to village Aarali (Bk.). His family has two agricultural lands which are looked after by his brother Ganesh and father Govind. He was informed on 02.07.2020 on phone around 6.30 p.m. by his cousins Pramod Yadav and Yuvraj Yadav that there was quarrel between Ganesh Govind Yadav, Ramesh Vitthal Yadav with the accused persons and they are lying injured in the field of accused No.1. He, therefore, went to Aarali (Bk.) and found that both i.e. Ganesh Govind Yadav and Ramesh Vitthal Yadav have expired. He then asked Govind i.e. his father as to how the things have happened,

then he came to know that in the morning Ramesh had asked Suresh as to why he is damaging the Bandh (boundary), at that time, Sambhaji i.e. accused No.2 had assaulted Ramesh with iron spade from backside. Ramesh fell down. Ramesh's son Dnyaneshwar was along with him, who came to call Ganesh and then Ganesh and Govind both had gone to the field of Suresh, at that time, the present applicant Chandrakala had put her leg on the head of Ramesh. It was found that Ramesh had expired at the spot. When Ganesh was picking Ramesh, at that time, Sambhaji asked Ganesh as to why he is coming in between and if he intervenes, he would be killed. Then, accused No.1 had caught Ganesh and Sambhaji by coming from the backside of Chandrakala gave blow of iron spade on the head of Ganesh, as a result of which Ganesh also fell down and then he was also assaulted by Suresh at various places on his body. Suresh Yadav then assaulted Govind also on his head, but he ducked resulting injury to his left shoulder. He raised voice, as a result of which Yuvraj and Pramod came running and then all the accused persons fled away.

6. Learned Advocate for the applicant submitted that the role attributed to the present applicant in the FIR is to the extent that she was present at the spot. She has not assaulted anybody. The statements of witnesses would show that they have made improvement and tried to

assign role to the present applicant by saying that she had caught hold of the deceased persons and made them to lie on the ground. Nothing has been recovered at the instance of the present applicant. Whatever recovery is there, it is by the co-accused. There is enmity between two families. In fact, the place of offence shown as the field of the applicant. It shows that the deceased persons were the aggressors and had trespassed in the land of the husband of the applicant. Supplementary statement of the informant has been recovered after 12 days and delay has not been explained. Though it is stated that Govind had also received injuries, yet, the entire charge-sheet does not show any injury certificate. Therefore, there is no further necessity of keeping the applicant behind bars. She deserves to be released on bail.

7. Per contra, the learned APP submitted that it is a case of double murder and the aggression can be seen from the fact that even after killing Ramesh, the accused persons were not satisfied and when Ganesh was trying to lift Ramesh, he was also severely assaulted resulting him in his death. As the father of the informant ducked, he could survive. When applicant has taken part in such serious offence, she deserve no sympathy.

8. At the outset it is to be noted that the FIR is lodged by the person who was not present at the spot, therefore, definitely he would have

relied, at that time, on the story that was given to him by somebody else and, therefore, when the FIR is not an encyclopedia, we are required to consider as to what the eye witnesses have stated. Before turning towards their statements, a fact is definitely required to be noted that postmortem report of Ganesh would show that he had sustained, in all, eight surface injuries. Most probably the fatal blow was the fracture of occipital bone. The probable cause of death is due to head injury, however, then the viscera has been preserved. The postmortem report of Ramesh would show that he had sustained five surface injuries and he had also sustained fracture to occipital bone. The probable cause of death is same. Now, as regards the injury certificate of Govind is concerned, though it appears to be not produced on record along with the charge-sheet, yet, it can be called. His statement has been recorded. He is the eye witness to the incident of assault on Ganesh. But, he appears to be the eye witness to the assault on Ramesh also, because he states that when he was standing by the side of the road to his field, at that time, Ramesh was asking Suresh as to why he is damaging the Bandh. At that time, Chandrakala i.e. present applicant had embraced/caught hold of both the legs of Ramesh and Suryaji @ Suresh also hugged Ramesh and then Sambhaji had assaulted Ramesh with iron spade. Four to five blows were given on the head. Dnyaneshwar went

to call Ganesh and Govind started shouting. Govind went towards Ramesh by holding his stick, at that time, present applicant was shouting and instigating other two persons to kill Ramesh. When Ganesh asked as to why they were assaulting, at that time, present applicant further instigated and asked the co-accused to assault Ganesh. Thereafter, again, she had embraced the legs of Ganesh and then Suresh had hugged Ganesh and his hands were tightly caught by him and then Sambhaji gave four to five blows to Ganesh. Govind was also attacked, but he ducked, as a result of which, he fell in the ditch nearby. The same story has been told by Dnyaneshwar, who appears to be a boy of 14 years. That means, the statements of eye witnesses corroborate to the postmortem report. Taking into consideration the statement of the eye witness, there is definitely active involvement of the applicant. Merely because, she is lady, we cannot give concession to her when she appears to have facilitated the commission of the crime. Because of her catching hold of legs of both the injured persons, they could not move and it facilitated her son to give blows on the head of the deceased. Therefore, she does not deserve any sympathy. Hence, application stands rejected.

9. It is made clear that the observations made are restricted for deciding bail application only and the Trial Court shall not get

influenced by any observations and decide the matter on its own merits taking into consideration the evidence that would be led by the prosecution.

[SMT. VIBHA KANKANWADI, J.]

scm