

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

**CRIMINAL APPLICATION NO.356 OF 2021
IN CRIMINAL APPEAL NO.61 OF 2021**

Nandu S/o Bansi Pawar
Age: 49 years, Occu: Agri,
R/o Waghadiwadi, Tq. Partur,
Dist. Jalna

... Applicant

Versus

The State of Maharashtra
Through In-charge, Police Station Officer
Partur Police Station. Tq. Partur,
Dist. Jalna

... Respondent

...

AND

**CRIMINAL APPLICATION NO.357 OF 2021
IN CRIMINAL APPEAL NO.61 OF 2021**

1. Pandit W/o Bansi Pawar
Age: 56 years, Occup. Agri,
R/o: Waghadi Wadi Tq. Partur & Dist. Jalna
2. Kalabai W/o Nandu Pawar
Age: 42 years, Occup. Agri,
R/o: Waghadi Wadi Tq. Partur & Dist. Jalna
3. Sharda Vilas Rathod
Age: 30 years, Occup. Agri,
R/o: Khambewadi Tq. & Dist. Jalna

... Applicants

Versus

The State of Maharashtra
Through In-charge, Police Station Officer
Partur Police Station. Tq. Partur,
Dist. Jalna

... Respondent

...

Advocate for Applicants : Mr. Sandip R. Sapkal
APP for Respondent – State : Mr. M. M. Nerlikar

...

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.**

DATE : 23rd JULY, 2021

PER COURT :

1. Pending the Criminal Appeal No.61 of 2021 preferred against the judgment and order passed by the Additional Sessions Judge, Jalna, dated 30-01-2021, in Sessions Case No.07 of 2017, convicting thereby the applicants – original accused persons to suffer imprisonment for life and fine of Rs.5,000/- each, in default to suffer simple imprisonment for six months, the applicant – accused No.1 Nandu Bansi Pawar has filed Criminal Application No. 356 of 2021 and the applicants - original accused Nos. 2 to 4 have filed Criminal Application No. 357 of 2021 for suspension of substantive part of sentence and for bail.

2. The learned counsel for applicants in both the applications submits that though the prosecution case rests upon the direct evidence, however, PW-2 Anil who is the sole eye witness to the incident is a child witness. The deceased was mother of the child witness Anil and the applicant – original accused No.1 Nandu is his father. The informant is the grandfather of child witness Anil from maternal side. The learned counsel submits that after the death of mother, child witness Anil stayed with the maternal grandfather – informant and as per the admission given by this

witness in paragraph No.9 of his cross examination, the grandfather – informant was taking all care and maintenance for his upbringing, education etc. The learned counsel for applicants submits that there is strong possibility of tutoring.

3. The learned counsel for applicants submits that so far as the applicants – original accused Nos. 2 to 4 are concerned, they were on bail during the trial and they have never tried to jump the conditions of bail. The learned counsel submits that the said child witness has made the allegations mainly against his father i.e. applicant – original accused No.1 Nandu for forcibly administering poison to the deceased. The learned counsel submits that there was no prior concert of mind as such and the incident had taken place in the heat of passion. The learned counsel submits that the applicants – original accused Nos. 2 to 4, who were on bail during the trial, may be released on bail.

4. The learned APP has strongly resisted the applications on the ground that evidence of the child witness Anil is reliable, trustworthy and consistent. The learned APP submits that on the same set of facts and allegations, the trial Court has convicted the applicant – original accused No.1 and the applicants – original accused Nos. 2 to 4. The case of the original accused Nos. 2 to 4 cannot be considered separately. The learned APP submits that as

per the ocular evidence, child witness Anil has deposed that the applicant – original accused No.2 - Pandit has instigated whereas applicant Nos. 2 and 3 (Original accused Nos. 3 and 4) caught hold hands and legs of the deceased respectively when the applicant – original accused No.1 was administrating poison forcibly to the deceased.

5. It appears that during trial, the applicants in Criminal Application No. 357 of 2021 were on bail. It further appears that the incident had taken place as of a sudden, without any premeditation. The applicant – original accused No.1 had returned to the house under the influence of liquor and started extending beating to the deceased by sitting on her abdomen. Thus, considering the same, and since, applicants in Criminal Application No. 357 were on bail, during trial, we are inclined to grant bail to them.

6. So far as the applicant – original applicant No.1 in Criminal Application No. 356 of 2021 is concerned, we find that there is a strong case against him. He has not only extended the beating to the deceased, but it appears that he returned to the house with some premeditation and accordingly, administered poison to the deceased forcibly by sitting on her abdomen. We are thus, not inclined to grant bail to applicant – accused No.1 in

Criminal Application No. 356 of 2021.

7. Hence the following order :-

ORDER

- I) Criminal Application No.356 of 2021 (Nandu S/o Bansi Pawar Vs. State of Maharashtra) is hereby rejected.
- II) Criminal Application No.357 of 2021 is hereby allowed.
- III) Pending the hearing and final disposal of the Criminal Appeal No.61 of 2021, the substantive part of the sentence passed by the Additional Sessions Judge, Jalna, against the applicants, in Sessions Case No. 07 of 2017, by the judgment and order dated 31-01-2021, to their extent only, stands suspended and till then the applicants – Pandit W/o Bansi Pawar, Kalabai W/o Nandu Pawar and Sharda Vilas Rathod be released on bail on furnishing Personal Bond of Rs.20,000/- (Rupees Twenty Thousand Only) each with one solvent surety each of the like amount.
- III) Applications are accordingly disposed of.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)