

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

904 BAIL APPLICATION NO.199 OF 2021

1. SHAIKH RIZWAN SHAIKH AHMED
2. SHAIKH SALEEM SHAIKH KARIM PATEL
3. LAKHAN PREMSINGH JARWAL

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant Nos.1 and 2 : Mr. Bhosle Abhaysinh K.
Advocate for Applicant No.3: Mr. Dhanraj Ingole h/f. Smt.Varsha Ghanekar
APP for Respondents/State : Mr. G.O.Wattamwar

...

AND

BAIL APPLICATION NO.215 OF 2021

GORAKH MISHRILAL BRAHMAKAR
VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Mohit Deshmukh h/f. Yogini Digraskar &
Gautam Pahilwan
APP for Respondents/State : Mr. G.O.Wattamwar

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CORAM : M.G. SEWLIKAR, J.
DATE : 23rd December, 2021

PC.:-

Both these applications can be disposed of by common order as they arise out of the same crime.

2. Both these applications are filed under Section 439 of the Cr.PC.

for releasing them on bail in connection with Crime No.295/2020 under Section 302, 404, 201 read with Section 34 of the I.P.C. registered with Cantonment (Chawwni) Police Station, Aurangabad.

3. Bail Application No.199/2021 is filed by applicant Shaikh Rizwan Shaikh Ahmed, Shaikh Saleem Shaikh Karim Patel and Lakhan Premsingh Jarwal, and Bail Application No.215/2021 is filed by Gorakh Mishrilal Brahmakar. Facts leading to these applications are that the informant is the sister of the deceased-Mohd. Azhar Mohd. Hanif. On 17th September, 2020 at 6.00 pm, Azhar (the deceased) brought home mutton and said to the informant that he would be back in some time and dinner should be kept ready. At 10.30 pm he came back and said that he had some work and would be back after finishing the work. On 18th September, 2020 at 3.30 am the deceased-Azhar came home and said that he had some work and went away after taking cash of Rs.10,000/- to Rs.15,000/- with him. At that time he had said that he would be going to see Rohan.

4. It is further alleged in the FIR that on 18th September, 2020 Khaled Ibrahim Shaikh who is the brother in law of the deceased (husband of informant's sister) called her at 9.00 am and told her that Azhar was killed by someone and his dead body was lying at Power House, Padegaon. When she went there, she found that the deceased was beaten black and blue. It is

further alleged in the FIR that about four months ago the deceased-Azhar had a quarrel with applicants-Saleem, Rizwan and one Rohan. They had stabbed the deceased-Azhar. On that count offence was registered with Chawwni Police Station. The deceased-Azhar used to say to the informant that Saleem, Rizwan and Rohan would kill him. She, therefore, expressed suspicion on these three persons. All these persons were arrested.

5. I have heard learned counsel Shri Bhosle and Shri Ingole for the applicants in application no.199/2021, Shri Deshmukh learned counsel for the applicant in application no.215/2021 and Shri Wattamwar learned APP for the State.

6. Shri Bhosle submitted that in the FIR lodged by the informant it is mentioned that the deceased had left the house at 12.00 am in the night stating therein that he would be meeting Rohan. He submitted that Rohan has not been made an accused. He further submitted that one Khaled Ibrahim Shaikh has stated that he had seen the deceased-Azhar with applicant-Saleem on a motorcycle at 11.45 pm on 17th September, 2020. He submitted that the deceased, as per FIR had gone back to the house at 12.00 in the night and again left the house saying that he would be meeting Rohan. He submitted that the contents of the FIR further show that the deceased had again come back at 3.30 am in the house and again went back without having dinner.

This clearly shows that applicant-Saleem had parted company with the deceased at 12.00 in the night itself. Therefore, there was no reason for the applicant to be in the company of the deceased. He submitted that the case rests on circumstantial evidence and the chain of circumstantial evidence is broken at several places. He submitted that the deceased had criminal antecedents. Therefore, there is every possibility of the murder of the deceased by someone who was on inimical terms with the deceased.

7. Learned counsel Shri Deshmukh for the applicant in application no.215/2021 submitted that applicant has no relation with the deceased. His name does not figure in the FIR. He was working at the construction site as a Watchman. He submitted that blood stained clothes are recovered from the applicant-Gorakh, however mere recovery of blood stained clothes is not sufficient to connect applicant with the offence. For this purpose he placed reliance on the cases of **Prabhakar Tewari V/s. State of Uttar Pradesh and Anr.** reported in (2020) 11 Supreme Court Cases 648, **Vinod V/s. State of Madhya Pradesh** reported in (2015) 15 Supreme Court Cases 722 and **Pohalya Motya Valvi V/s. State of Maharashtra** reported in (1980) 1 Supreme Court Cases 530.

8. Learned APP Shri Wattamwar submitted that there is ample evidence against the applicants. He submitted that a stick is recovered from

accused-Rizwan having stains of the blood of the deceased. Similarly, clothes of the deceased were seized from the house of accused-Rizwan, they were stained with blood and mud. From the possession of the accused-Lakhan mobile of deceased-Azhar was seized. Clothes of deceased were also seized from his possession. He further argued that at the instance of accused-Gorakh clothes having blood stains were recovered. Empty liquor bottles were also recovered at his instance. From accused-Saleem a rod was seized. He submitted that Salim was seen with the deceased at 11.45 pm. He submitted that applicant-Saleem is also involved in the commission of the offence. He submitted that the deceased had 35 injuries. He further submitted that CDR details show that accused and the deceased were in touch with each other in the night of the incident. He submitted that all the circumstances point towards the guilt of the accused, therefore, they should not be released on bail. He submitted that applicants have criminal antecedents. Applicant-Rizwan had assaulted the deceased for which the deceased-Azhar had lodged the complaint on the basis of which charge-sheet has been filed and the case is pending.

9. Charge-sheet is filed. So far as applicant-Rizwan is concerned he has given memorandum that he would produce the stick and the clothes he was wearing at the time of the incident. Accordingly, he produced a stick from

the grass behind the open space of MSEB Power House. Thereafter, applicant-Rizwan led the police to his house and from a cup-board he produced the clothes having blood stains. The clothes were a white colour shirt and jeans pant of black colour. CA certificate is produced. It shows that these clothes had blood stains of group-A. CA report further shows that blood group of the deceased was 'A'. In terms of CA report, the stick which was recovered at the instance of the applicant-Rizwan from the grass behind the open space of MSEB Power House had human blood stains.

10. It is pertinent to note that when applicant-Rizwan was arrested and when he was produced before the Medical Officer, applicant-Rizwan had abrasion on right side of chest which was caused by hard and blunt weapon and other injuries were contused wound, punctured wound on backside of right shoulder which was caused by hard and sharp weapon like tooth. Both the injuries were simple in nature. These injuries coupled with the recovery of blood stained clothes having blood group-A and the recovered blood stained stick having blood stains clearly show that the deceased was beaten by the applicant-Rizwan. Indisputably, there is no eye witness to the incident. But the record shows that the deceased was earlier beaten by the applicant-Rizwan on the basis of which charge-sheet has been filed against him. The deceased had lodged the complaint against the applicant-Rizwan and Saleem

and Rohan on 19.05.2020. All these circumstances clearly indicate that the applicant is the author of the crime.

11. So far as applicant-Saleem is concerned a rod was seized from him. However, it does not have blood stains. The deceased was seen by one of the witnesses at 11.45 pm on 17th September, 2020. It is true that the deceased had come back home at 12.00 am and again went back and came back at 3.30 am and again went back. From these circumstances, it cannot be gathered that the applicant-Saleem had parted company with the deceased. It is pertinent to note that applicant-Saleem was arrested on 18th September, 2020 and produced before the Medical Officer. Applicant-Saleem had multiple linear abrasions over right side of abdomen and multiple linear abrasion over back, above left buttock. Both the injuries were caused by hard and blunt object and were simple in nature.

12. Applicant-Saleem also had assaulted the deceased on 19.05.2020. On this incident the deceased had filed FIR against applicant-Saleem as indicated above. These injuries strengthen the prosecution case that he was present at the spot of the incident and he had participated in the incident of beating the deceased.

13. So far as accused-Lakhan Jarwal is concerned he was arrested on

18th November, 2020. He gave the memorandum that he had concealed the mobile of the deceased and had thrown the clothes of the deceased and would produce the clothes he was wearing at the time of the incident. Accordingly, he produced pant of black colour and mobile phone bearing IMEI No. 358822726460863 and IMEI No. 358822727450863. These articles were recovered from iron pipe in a tin shed near the house of the applicant-Lakhan. He led the police to the Hanuman temple, Shani temple at Padegaon and from there he produced the pant of the deceased which was thrown by him. As per CA report the both the recovered pants of deceased and applicant had blood stains of blood group-A. This clearly shows that the pant of the deceased was recovered at the instance of the accused/applicant-Lakhan it had blood stains of group-A.

14. As far as applicant-Gorakh is concerned he has given a memorandum that he would produce the clothes he was wearing at the time of the incident. Accordingly, he produced a shirt of full sleeves and jeans pant of black colour. These clothes were recovered from under the cot in his house. These two clothes had the blood stains of group-A. His blood group as per CA report is blood group-B. This clearly shows that he was also present at the spot of the incident. He is also one of the assailants. All these circumstances clearly show that the applicants and the deceased were together at the spot of

the incident. At the instance of the applicant-Gorakh Brahmakar empty liquor bottles were produced. It lends corroboration to the prosecution story that the applicants and the deceased were drinking liquor. Suddenly, a quarrel started and all the applicants brutally beat the deceased. The deceased had 35 injuries. Not only that the applicants removed the clothes of the deceased. The deceased was lying in naked condition. Weapons used in the offence were stick and an iron rod. Number of injuries i.e. 35 clearly indicate that all the applicants had the intention to kill the deceased. This can be borne out from the fact that the deceased was assaulted by applicants-Saleem and Rizwan in the past on the basis of which the FIR was lodged.

15. In the case of **Prabhakar Tewari** cited (supra) it has been held that the offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. This decision of the Hon'ble Apex Court has no application to the facts of the instant case as in this decision there was no incriminating evidence against the accused. When there is no evidence, pendency of criminal cases cannot be a factor for refusal of bail. In the case at hand this is not the factual position. There is evidence against all the applicants.

16. In the case of **Vinod** cited (supra) it has been observed as under:

“17. The fact that immediately, after the incident, a visiting card and purse was found at the place of the incident near the dead body of deceased Harivallabh, was also not accepted to be a valid evidence for convicting the appellant for the murder of deceased Harivallabh. The probability of droppage of such visiting card and purse during a previous visit cannot be refuted. On the same ground, the appellant cannot be held guilty for the murder of deceased Meenu.”

This authority also has no application to the facts of the instant case because all the applicants were having blood stains on their clothes of the deceased.

17. In the case of **Pohalya Motya Valvi** cited (supra) it has been held as under:

“15. The recovery of a bloodstained spear becomes incriminating not because of its recovery at the instance of the accused but the element of criminality tending to connect the accused with the crime lies in the authorship of concealment, namely, that the appellant who gave information leading to its discovery was the person who concealed it. And in this case Bhamta was another co-accused. The appellant may have only the knowledge of the place where it was hidden. To make such a circumstance incriminating it must be shown that the appellant himself had concealed the bloodstained spear which was the weapon of offence and on this point the language used

in the contemporaneous record Ext. 28 is not free from doubt and when two constructions are possible in a criminal trial, the one beneficial to the accused Will have to be adopted. Therefore, this linchpin of the prosecution case ceases to provide any incriminating evidence against the appellant.”

This authority also has no application to the case at hand as all the recoveries have been made at the instance of the accused-applicants.

18. Thus, *prima facie* there is material to show the involvement of the accused in the murder of the deceased. Considering the gravity and seriousness of the offence, I am not inclined to release the applicant on bail. Both the applications are rejected.

19. These observations are made only for the disposal of these applications and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]