

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

**919 BAIL APPLICATION NO.100 OF 2021
WITH APPLN/398/2021 IN BA/100/2021**

RAGHUNATH INDAL CHAVAN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.B. Patil, Advocate for applicants

Mr. N.T. Bhagat, APP for respondent

Mr. U.S. Patil, Advocate for assist to PP

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24th FEBRUARY, 2021.

PER COURT :

1 Criminal Application No.398 of 2021 moved for assist to PP is allowed and disposed of.

2 Present applicants have been arrested in connection with Crime No.254/2020 registered with Dhule Taluka Police Station, for the offence punishable under Section 302, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code. The applicant Nos.1 and 3 came to be arrested on 21.07.2020 and applicant No.2 came to be arrested on 23.07.2020. They have filed present application under Section 439 of the Code of Criminal

Procedure, 1973.

3 Heard learned Advocate Mr. V.B. Patil for applicants and learned APP Mr. N.T. Bhagat for the respondent.

4 It has been submitted on behalf of the applicants that the First Information Report has been lodged by one Sahebrao Ananda Chavan, who is the brother of the deceased Parshuram. The present applicants are having a grocery shop in the village and the informant and his family members used to purchase the necessary commodities from the said grocery shop. The informant has stated that at about 4.30 p.m. on 17.07.2020 when the informant was near the field of his cousin brother, he received phone call from his wife Sunita, informing him that the present applicants and co-accused were assaulting Parshuram, on the count of due amount of Rs.50/- towards purchase of the commodity purchased from grocery shop of the applicants. When the informant went to the spot, he found all the accused persons assaulting Parshuram with wooden sticks. Though he had requested not to assault Parshuram, but the applicants abused and assaulted Parshuram as well as the informant. Informant states that on the same day Parshuram was taken to Dhule Civil Hospital at about 8.30 p.m. He was treated and was let go home after the X-ray was taken with medicines. Parshuram had taken rest on 18.07.2020 and 19.07.2020. Thereafter, certain problems with parts

of his body were developed at about 3.00 a.m. on 20.07.2020. Therefore, he was taken to Dr. Zende's Hospital. After he was treated there for a while, he was then shifted to Om Critical Care at Dhule. By that time, the health of the injured Parshuram had deteriorated. Around 8.30 p.m. on 20.07.2020 Parshuram expired and then he lodged the report on 21.07.2020.

5 The learned Advocate for the applicants further submitted that perusal of the FIR would show that though the injured was taken on the same day to Civil Hospital, yet the papers those have been annexed along with charge sheet would show that he was examined by the Civil Hospital authorities on 18.07.2020 at about 12.30 p.m. Statement of the wife of the informant would show that some treatment was given at home to Parshuram on the day of alleged incident and thereafter he was taken to Civil Hospital on the next day and the nature of the injuries were told as simple. If there was seriousness in the injuries, then the hospital authorities would not have discharged Parshuram. The Post Mortem report gives the final opinion of death as "Cellulitis and gangrene over left lower limb and lower abdomen due to blunt trauma to left lower limb". It is submitted that the gangrene will not develop within 2-3 days. Further, the Investigating Officer has not collected the treatment papers from Dr. Zende's Hospital and Om Critical Care. The intention could not have been to commit murder of Parshuram.

Now, since the investigation is over and the charge sheet is filed the further physical custody of the applicants is no longer required, and therefore, he canvassed for releasing them on bail.

6 The learned APP, well assisted by learned Advocate Mr. U.S. Patil for the informant, submits that there is ample evidence against the present applicants. Informant himself is also the injured person in the incident. He has specifically stated that the present applicants had assaulted Parshuram with wooden sticks in his presence and it was on the trifle ground that amount of Rs.50/- was not paid by Parshuram, though demanded, by the applicants in the past. Further, there are eye witnesses to the incident, who have seen the present applicants assaulting deceased Parshuram. The inquest panchnama as well as the Post Mortem Report show the injuries on the person of the deceased. Column No.15 of the Post Mortem Report specifically states about the observation of the injuries as "External genitals swollen, on cut section of scrotum, evidence of cellulitis and gangrene present on both side of scrotum". The injuries in column No.17 are seven in number, which were the surface injuries and they all were antemortem and it is stated that they were about 1-4 days old and are possible by the impact of hard and blunt object. Only on the ground of outstanding amount of Rs.50/- if such brutal act is done by the applicants, then they deserve no sympathy.

Learned APP further submitted that there is discovery of the weapons used in the commission of the crime at the behest of the applicant. Further, those weapons were sent to Government Medical College for the opinion and the opinion, that is, given by the experts is that the injury Nos.1 to 7, mentioned in the column No.17 of the Post Mortem Report of the deceased Parshuram, are possible by such kind of weapon. Therefore, when strong evidence is there, the applicants do not deserve any kind of sympathy. The charge is also framed by the learned Trial Judge.

7 At the outset, it can be seen that when the charge sheet is filed, there is room to believe that the investigation is over and further physical custody of the applicants is not necessary unless the prosecution or Investigating Officer comes with the case that still there is some investigation, that is, contemplated under Section 173(8) of the Code of Criminal Procedure. Here, in this case, informant himself is an eye witness, so also his wife and other certain witnesses have stated that the present applicants had assaulted Parshuram with stick. It is further required to be connected to the fact that though informant had stated that on the same day deceased was taken to Civil Hospital for treatment and the X-ray was done; yet, the injury certificate i.e. issued by the Civil Hospital appears to be of 18.07.2020. Though it appears that the said injury certificate is not a complete certificate;

yet, when no other document is coming on record at this stage, perusal of the same would show that whatever injuries were noted were by hard and blunt object and it was caused within 20 hours, and the nature was simple. Even as per the prosecution story and the contents of the FIR it can be seen that the Medical Officer, who had examined Parshuram on 18.07.2020, found that further treatment by admitting him in the hospital is not necessary. He was allowed to go home. Thereafter on 18.07.2020 and 19.07.2020 Parshuram was at home. As per the FIR and statements of certain witnesses, that is, Family members of the informant state that Parshuram had taken rest and was given medicine at home, during those two days. When he was seen by the Medical Officer on 18.07.2020, then it is not coming on record, as to whether any medicine was prescribed by the hospital authorities or not. Then the prosecution story is that, as Parshuram developed health problem at about 3.00 a.m. on 20.07.2020, he was taken to Dr. Zende at 4.00 a.m. and was admitted there. At the costs of repetition, fact is required to be placed on record that the treatment papers from Dr. Zende and Om Critical Care do not find part of the charge sheet. Thereafter, the contents of the Post Mortem Report are required to be considered. Seven surface injuries were noted and the final cause of death has been given as "Cellulitis and gangrene". Now, it is required to be considered, as to whether gangrene can develop all of a sudden or the accused could have contemplated that those injuries would

have resulted in gangrene. Even if we consider the final report after the C.A. report was considered, which states, "Cellulitis and gangrene over left lower limb and lower abdomen due to blunt trauma to left lower limb". Therefore, intention or *mens rea*, which is the basic ingredient is then required to be considered. Even the knowledge can be covered for holding a person guilty under Section 302 of the Indian Penal Code, however, that intention or knowledge, whether the act would result in Cellulitis and gangrene, is the important aspect. Therefore, though there appears to be a prima facie evidence on record to show that the present applicants had assaulted Parshuram with sticks; yet they deserve to be released on bail. No doubt, the charge is stated to have been framed by the learned Trial Judge; yet, definitely it would take certain time to complete the trial. Till then the applicants need not be asked to remain in jail. At the same time, since the parties are residing in the same village, conditions are required to be imposed. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Raghunath Indal Chavan, 2) Prem @ Premchand Indal Chavan and 3) Bhikan Indal Chavan, who have been arrested, in connection with Crime No.254/2020 registered with Dhule

Taluka Police Station, Dist. Dhule, for the offence punishable under Section 302, 324, 323, 504, 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 Mordad Tanda, Tq. & Dist. Dhule 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. 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.)