

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.247 OF 2021

- 1) Rafique s/o Abdul Latif Deshmukh,
Age 45 years, Occupation Agril.,
- 2) Moin s/o Abdul Latif Deshmukh,
Age 43 years, Occupation Agril.,

Both R/o Mukund Nagar, Ahmednagar,
Tq. And Dist. Ahmednagar.

**...Applicants
(Original Accused)**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Newasa Police Station,
Tq. Newasa Dist. Ahmednagar.

...Respondent

.....
Advocate for Applicant : Mr. R. R. Karpe.
APP for Respondent : Mr. N. T. Bhagat.

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
16-03-2021**

**Date of Pronouncing the Order :
04-05-2021**

ORDER :

1. Present applicants are the original accused No.1 and 2 who came to be arrested on 21-12-2020 by Newasa Police Station, Ahmednagar, in connection with Crime No.958 of 2020, for the offence punishable

under Section 302, 323, 504, 506 read with 34 of the Indian Penal Code. They have filed present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. R. R. Karpe for applicant and learned APP Mr. N. T. Bhagat for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the informant is the nephew of the applicants, and it is the say of the informant that, there was dispute pending in respect of partition of the property amongst the applicants, co-accused Nadeem Abdul Latif Deshmukh and the brother of the informant. He states that his father was called by the present applicants and co-accused to Bhanas Hivra Tq. Newasa Dist. Ahmednagar for effecting partition, however his father told that he is ill and, therefore, unable to come, but his sons i.e. informant and his brother would attend. Thereafter, there was the meeting between all those persons but dispute arose as to how the partition would take place. The applicants asked informant that he should call his father. Thereafter, the father arrived around 02.30 p.m. It is stated that after the father of the informant arrived, the applicants and co-accused started abusing his father. Applicant No.1 was holding

wooden log, applicant No.2 was holding drum and chilly powder. Co-accused Nadeem was holding knife and wooden log. Informant and others were threatened not to come near and then applicant No.1 was telling the father of the informant that the partition would take place as per their say. When the father of the informant started saying that they should not dispute and the partition can take place in peace, at that time applicant No.1 started assaulting informant's father with wooden log. When informant, his brother and cousin brothers started going towards father, applicant No.2 showed them the chilly powder and some liquid from the drum, therefore due to fear they did not proceed further. When the father was restraining applicant No.2, co-accused Nadeem stabbed the father of the informant. Father sustained bleeding injury to his stomach and fell down. When informant started to go towards him, he was assaulted by applicant No.1 with wooden log on his knees. Taking into consideration the injuries sustained by the father, all the accused persons ran away by giving threat that the partition would take place as per their say otherwise they will not let anybody leave. It is then contended that in that assault / scuffle, present applicants and co-accused Nadeem have also received injuries. Father was then taken to Rural Hospital, Newasa Phata, then he was referred to

Ahmednagar. He was taken to Civil Hospital, Ahmednagar and prior to he would be given treatment, he was declared dead.

4. After reading the FIR the learned Advocate for the applicants submitted that taking into consideration the role attributed to the present applicants, offence under Section 302 of IPC cannot be directly attributed to them. The investigation is over and nothing is required to be recovered at the instance of the present applicants. Informant was clear enough in saying that even the present applicants had received injuries, it shows that there would have been a free fight between them. Applicants, therefore, deserve to be released on bail.

5. Per contra, the learned APP strongly opposed the application and submitted that the father of the informant was called at the said place with intention to commit his murder. The applicants were insisting that the partition should take place in a particular manner which they wanted in their favour, however the informant and his father were of the view that it could be sorted out across the table. There is ample evidence against the present applicants as their role is very much clear at that place and so also the presence can be marked from the fact that they had also received the injuries.

Taking into consideration the relationship between the parties, possibility of tampering with the evidence cannot be ruled out. The investigation is still incomplete and, therefore, the applicants may not be released on bail.

6. As aforesaid all the contents of the FIR are already reproduced and, therefore, they are not reproduced once again. It appears from the police papers, especially the inquest panchanama, post mortem report and the statements of the witnesses that the fatal blow by knife was given by co-accused Nadeem. Column No.17 of the post mortem report gives three injuries as under,

- i) Stab wound of 4 cm., 12 cm below xiphod sternum,
- ii) Multiple tiny contused circular abrasions,
- iii) Therapeutic intravenous puncture mark on lateral aspect of right wrist and right cubital fossa.

The probable cause of death is, "haemorrhage and shock due to stab wound over the abdomen." Therefore, prima facie it appears that co-accused Nadeem is the author of the crime of murder. As regards applicant No.2 is concerned, it is only stated that he was holding chilly powder and drum containing liquid, but none of the

witnesses state that he had thrown that substance over anybody. Applicant No.1 was holding wooden log, and it is stated that, he had assaulted the deceased as well as informant. At the most, injury No.2 in column No.17 may be attributed to applicant No.1. Co-accused Nadeem has also been arrested and the knife has been recovered at his instance under Section 27 of the Indian Evidence Act. Wooden log has also been seized, therefore the substantial investigation appears to have been concluded. Under such circumstance, when it will take long time to stand the trial with the role attributed to the applicants, they deserve to be released on bail. Hence, following order.

ORDER

- 1) Application is allowed.
- 2) Applicants Rafique s/o Abdul Latif Deshmukh and Moin s/o Abdul Latif Deshmukh, arrested in connection with Crime No.958 of 2020, registered on 21-12-2020 with Newasa Police Station Tq Newasa Dist. Ahmednagar, for the offences punishable under Section 302, 323, 504, 506 read with 34 of the Indian Penal Code, be released on P.R. of Rs.50,000/- each (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).

- 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) Before submission of bail papers, the applicants should give complete address of their residence with their mobile numbers. So also they should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) The applicants to attend Newasa Police Station Tq. Newasa Dist. Ahmednagar, once in a week i.e. on every Wednesday in between 09.00 a.m. to 12.00 noon and maintain diary of their attendance duly countersigned by the Police Station officer, till filing of the charge-sheet.
- 7) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-