

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.146 OF 2021

BHIMRAO S/O GANPAT MUNDHE
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. S. D. Tawshikar, Advocate for the applicant.
Mrs. D. S. Jape, APP for the respondent – State.

.....
WITH
CRIMINAL APPLICATION NO.505 OF 2021

CHANDRAKANT W/O JANARDHAN MUNDHE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

.....
Mr. V. P. Sawant, Advocate for the applicant – original informant.
Mrs. D. S. Jape, APP for respondent No.1- State.
Mr. S. D. Tawshikar, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 10th March, 2021
Pronounced on : 18th March, 2021

ORDER :-

. Present applicant has been arrested on 09.10.2020 in connection with Crime No.403 of 2020 by Gondvi Police Station, District Jalna for the offences punishable under Sections 302, 307, 323, 504 read with 34 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. D. Tawshikar for the applicant and learned APP Mrs. D. S. Jape for respondent – State assisted by learned Advocate Mr. V. P. Sawant for the original informant. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

3. It is to be noted that the FIR has been lodged by the wife of the deceased. One Janardhan Uttam Mundhe is the deceased and he used to reside with the informant wife - Chandrakalabai, two sons Suresh and Samadhan, daughter-in-law - Anita Suresh Mundhe and granddaughter Shruti. Informant says that her father had expired and, therefore, on 10.09.2020, she had gone along with her son Suresh for the 13th day rituals at Wakulni Bhaygavhan, Taluka Ambad. When she returned at about 8.00 p.m. on the same day, she found that her husband was in unconscious state. She made inquiry with her daughter-in-law Anita and came to know that Janardhan was coming back to home from field with their two bullocks and daughter Shruti around 6.00 p.m. Present applicant and his family members have agricultural land bearing Gut No.367 and they raised dispute with Janardhan as to why he is using the road and then the present applicant and his son Bhagwat assaulted Janardhan with sticks. Blow was given on his head, back and chest. Present applicant's wife Shantabai and mother-in-law of son of the

present applicant abused Janardhan and assaulted him by kicks and fists. Chandrakalabai, thereafter, made arrangements to shift husband Janardhan to Gondi Police Station. Police had then given memo and referred him to Government Hospital, Ambad. Janardhan was treated there and then he was brought to home at Dongaon, however, thereafter, he started getting trouble and, therefore, he was admitted to Narale Hospital at Pachod. He was then referred to private hospital i.e. Dunakhe Hospital at Aurangabad and while he was undergoing treatment, Chandrakalabai lodged report on 23.09.2020.

4. Perusal of the said FIR would show that there is delay of 13 days in lodging the report. When, in fact, the informant has two sons i.e. Suresh as well as Samadhan, why they had not lodged report with the police in spite of having knowledge about the occurrence and involvement of the accused persons from Anita, is not explained in the entire charge-sheet. Now, the investigation is over and charge-sheet is filed. Present applicant is aged 75 years old. Deceased was 55 years old person. Statement of Anita, who has posed herself as eye witness, would also show that she had seen present applicant and his son assaulting her father-in-law with sticks, however, it is to be noted that after Janardhan was taken to Police Station on the same day and the medical memo was given for his reference, yet the entire charge-sheet

does not state about the collection of medical certificate issued by the medical officer from Government Hospital, Ambad. Even according to those witnesses i.e. wife, sons of the deceased and daughter-in-law, it can be seen that the concerned medical officer had given treatment at Ambad and asked deceased to go home. It appears from the medical papers from Dunakhe Hospital that he was admitted to said hospital on 21.09.2020. Documents from Narale hospital have also not been collected. The FIR is silent on the dates, so also the statements of witnesses as to exactly when the Janardhan was taken to Narale Hospital and then he was shifted to Dunakhe hospital. Therefore, the charge-sheet does not give any account in respect of state of health of Janardhan from 10.09.2020 to 21.09.2020. It appears that the Investigating Officer has not even collected the entire postmortem report. Only one sheet has been attached and it states that cause of death is head injury. Therefore, at this stage, this Court is deprived of noting the injuries those have been caused which are generally given in column No.17 of the postmortem report and further, the internal injuries which are generally stated in column No.20 of the postmortem report. When the statements of witnesses gives us a picture that for ten days Janardhan was at home, then whether his death can be related to the alleged assault that had taken place on 10.09.2020 is a question.

5. Learned APP has placed much reliance on the statement of Shruti. Her statement under Section 161 of the Code of Criminal Procedure shows that she is aged 3 years. Even if we take it as it is because there are only nine questions those were asked to her, yet she is disclosing the name of the son of the present applicant and not the applicant himself. Under Such circumstance, taking into consideration the evidence against the present applicant, his age and the above referred facts, he deserves to be released on bail. Hence, the following order :-

ORDER

- (I) Bail Application stands allowed.
- (II) Criminal Application No.505 of 2021 for assist to PP stands allowed and disposed of.
- (III) Applicant – Bhimrao s/o Ganpat Mundhe, who has been arrested in connection with Crime No.403 of 2020 registered with Gondi Police Station, District Jalna for the offences punishable under Sections 302, 307, 323, 504 read with 34 of Indian Penal Code, be released on P .R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.

(IV) He shall not tamper with the evidence of the prosecution in any manner.

(V) He shall not indulge in any criminal activity.

(VI) 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.

(VII) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm