

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.442 OF 2021

- 1) Arbaz Khan Samsud Khan,
Age 21 years, Occupation Labour,
R/o MIDC, Avdhan, Dhule
Taluka and District Dhule.
- 2) Sajid Jaffar Khatik,
Age 21 years, Occupation Labour,
R/o Jamcha Mala, 80 feet Road,
Near Shafur Poultry House,
Dhule Taluka and Dist.Dhule.

...Applicants

VERSUS

The State of Maharashtra,
Through it's Police Inspector,
Chalisgaon Road Police Station,
Dhule Taluka and Dist. Dhule.

...Respondent

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Advocate for Applicants : Mr. N. L. Choudhari
APP for Respondent-State : Mr. P. G. Borade

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CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
06-05-2021**

**DATE OF PRONOUNCING THE ORDER :
08-06-2021**

ORDER :

1. Present applicants are original accused No.6 and 7 who came to be arrested on 14-08-2020 by Chalisgaon Road Police Station, Dhule

Taluka and District Dhule, in connection with Crime No.77 of 2020, for the offence punishable under Section 302, 323, 14, 147, 148, 149, 120-B of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. L. Choudhari for applicants and learned Additional Public Prosecutor Mr. P. G. Borade for respondent-State. In order to cut short it is stated that, both of them have made submissions in support of their respective contentions.

3. Perusal of the First Information Report lodged by one Abdulla Atikur Raheman Khan (Chaudhari) would show that he resides at Jamcha Mala, Behind Mulla Colony, Chalisgaon Road, Dhule with his wife and children. There was a meeting around 09.20 p.m. on 09-08-2020 in front of Darulsalam Masjid. It was attended by the informant himself, Munnaseth, Ibrahim Bhai, Jahid Bhai, Abdul Wafa, Rashid Khan, Dr. Malik, Haddis Bhai as well as informant's son Tahir, one Abdul Rajjak, Ikram Khan and Pallu @ Ikrar. There were some objections and oral altercations between the informant and his brother-in-law Abdul Rajjak Liyakat Khan. Thereupon Ikram Khan Rajjak Khan gave threat to Tahir that he would be killed and, thereafter, Ikram started assaulting Tahir with fists blows on his

face. The meeting was called off after the settlement and all of them disbursed to their house. Informant, thereafter, told his another son Abdul Bashid Abdulla Khan that he should go to sleep in his Sofa Factory near Sahil Hotel. Accordingly Bashid, Mohammad Kaif and Arbaj Khan went on motorcycle. Around 10.22 p.m. Bashid gave a call to Tahir and told that he should come near Sabir Sheth Complex. Tahir went along with Abdul Rashid Mohammad Jakir Khan. Around 10.25 p.m. Tahir gave phone call to informant and told that Bashid has been assaulted with knife and, therefore, he and Abdul Rashid Mohammad Jakir Khan were taking him to Civil Hospital. Informant went to Civil Hospital along with his brothers. Tahir told that when he was near Sabir Sheth Complex at that time he was obstructed by Abdul Rajjak Liyakat Khan, Imran Khan Abdul Rajjak Khan, Pallu Abdul Rajjak Khan, Ikram Rajjak Khan, Ijar @ Raja Rajjak Khan. All of them were stating as to why his father had taken the meeting and then he was assaulted by fists and blows. One Imran Khan Abdul Rajjak Khan gave blow by means of knife on his stomach. Bashid was then checked by the Medical officer and was declared dead. After the dead body was taken to post mortem, First Information Report has been lodged.

4. Now the investigation is over and charge-sheet is filed. Under such circumstance, there is room to believe that the further physical custody of applicants is not required for the purpose of investigation. Under the said circumstance, it is required to be seen as to what evidence has been collected against the present applicants. It is made clear that only that material which is connected to the present applicants would be considered in this application.

5. The spot panchanama shows that many samples as well as the handle of the knife, its cover have been seized from the spot. closed-circuit television (CCTV) footage has been also recovered from the nearby area where closed-circuit televisions were installed. In the transcript panchanama it is specifically stated that as regards the present applicants are concerned, their presence is stated. It is specifically noted that the person who is giving blows of knife is Ijar @ Raja Abdul Rajjak Khan. Co-accused persons have been arrested and there is recovery from them either under Section 27 of the Indian Evidence Act or at the time of their arrest. Statements of eye-witnesses have been recorded, out of them witness Mohammod Kaif Hajrat Ali Chaudhari and Arbaj Khan Gulam Husen Chaudhari have not stated the names of present applicants, however the other

two eye-witnesses namely Nayab Khan Tahir Khan and Abdul Fahad Hatimulla Khan have stated that the present applicants were assaulting deceased by hand i.e. fists blows. Definitely the post mortem report would show that the death is homicidal i.e. due to multiple stab injuries over back, but as regards the role attributed to the present applicants are concerned, as per the two eye-witnesses, it is limited to the assault with fists blows. Therefore, taking into consideration this kind of evidence, they deserve to be released on bail as it would take long time to stand their trial. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicants/ accused Arbaz Khan Samsud Khan and Sajid Jaffar Khatik, in Sessions Case No.111 of 2020, pending before Sessions Judge, Dhule District Dhule, (in connection with Crime No.77 of 2020, registered with Chalisgaon Road Police Station, Dist. Dhule, for the offence punishable under Section 302, 323, 143, 147, 148, 149, 120-B 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) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-