

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

960 BAIL APPLICATION NO.523 OF 2021

1. Sudhakar s/o. Shivappa Waghmare
Age: 65 years, Occu.: Agri.
2. Amol s/o Sudhakar Waghmare
Age: 36 years, Occu.: Agri. ..Applicants

VERSUS

- . The State of Maharashtra
Through Police Station, Naldurg,
Dist.Osmanabad. ..Respondent

...
Advocate for Applicants : Shri U.B.Bondar
APP for Respondent : Shri G.O.Wattamwar

...
CORAM : M.G.SEWLIKAR, J.

DATE: 10th June, 2021

PER COURT:-

1. Heard.
2. This is an application under Section 439 of the Code of Criminal Procedure.
3. Facts leading to this application are that, on 22-11-2020 at about 06:00 p.m., the husband of the informant by the name of Yashwant Malhari Chimane had gone to meet his elder brother Dilip Chimane. When he was returning from the house of his

brother, at about 06:30 p.m., applicant No.1, the relative of Yashwant came there on Motorcycle and hoodwinked Yashwant. There upon, exchange of words ensued between the deceased Yashwant and applicant No.1. At that very moment, applicant No.2 came there armed with a stick and delivered a blow of it on the rear side of the head of deceased Yashwant, owing to which deceased Yashwant sustained grievous injury. Deceased Yashwant was shifted to the hospital at Andur. He was shifted to the Civil Hospital, Solapur. Crime No.341 of 2020 came to be registered with Naldurg Police Station, Dist.Osmanabad, on 23rd November 2020. During the course of the treatment, Yashwant died. Therefore, offence was converted into Section 302 of the Indian Penal Code.

4. Heard Shri U.B.Bondar, learned counsel for the applicants and Shri G.O.Wattamwar, learned APP for the respondent State.

5. Shri Bondar, learned counsel for the applicants submitted that quarrel took place on the heat of passion and on the spur of moment. It was not preplanned murder. He submitted that the applicants had no intention to commit murder of the deceased. He further submitted that applicant No.1 had no role to play in the alleged offence. He submitted that charge-sheet has been

filed. Therefore, there is no question of keeping the applicants behind the bars.

6. Shri Wattamwar, learned APP for the respondent State submitted that applicant No.2 came at the spot of the incident from behind and delivered a blow of stick on the head of the deceased. It shows that he had the intention to commit murder of deceased. Therefore, applicant No.2 is not entitled to be released on bail. He submitted that applicant No.1 is also not entitled to be released on bail as applicant No.1 himself was the initiator of the quarrel.

7. So far as applicant No.1 is concerned, only allegation against him is that he hoodwinked the deceased and exchange of words and abuses ensued. The fatal assault was given by applicant No.2. Applicant No.1 had no role to play in the alleged offence. Having regard to the allegations and the evidence collected against applicant No.1, I am inclined to release applicant No.1 on bail.

8. So far as applicant No.2 is concerned, when this Court expressed its disinclination to grant any relief to applicant No.2, learned counsel for the applicants, on instructions, sought

permission to withdraw application to the extent of applicant No.2. Permission is accordingly granted.

9. For the reasons discussed herein above, application will have to be partly allowed. Hence, the order:

ORDER

- i) Application is partly allowed.
- ii) Applicant No.1 Sudhakar s/o Shivappa Waghmare be released on bail in connection with Crime No.341 of 2020 registered with Naldurg Police Station, Dist.Osmanabad, for the offences punishable under Sections 302, 307, 504 read with Section 34 of the Indian Penal Code, on furnishing PR Bond of Rs.50,000/- (Rs.Fifty Thousand only) with one solvent surety in the like amount.
- iii) Application of applicant No.2 Amol s/o Sudhakar Waghmare is disposed of as withdrawn.

(M.G.SEWLIKAR)
JUDGE

SPT