

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

**919 BAIL APPLICATION NO.620 OF 2021
WITH APPLN/1302/2021 IN BA/620/2021**

Shri Mahesh S/o. Gurunath Biradar
Age: 32 years, Occu.: Agri.,
R/o. Malkapur, Tq.Udgir,
Dist.Latur. ..Applicant

VERSUS

The State of Maharashtra,
Through: In-charge Police Inspector,
Udgir (R) Police Station, Udgir,
Tq.Udgir, Dist.Latur. ..Respondent

...
Advocate for Applicant : Shri S.P.Brahme h/f.
Shri Laxmikant C. Patil
PP for Respondent : Shri D.R.Kale.
Advocate for Informant : Shri G.R.Syed
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**BAIL APPLICATION NO. 608 OF 2021
WITH APPLN/1187/2021 IN BA/608/2021**

Rajkumar @ Maroti S/o Laxman Biradar
Age: 25 years, Occu.: Agriculture,
R/o. Haibatpur, Udgir,
Latur. ..Applicant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra,
Through: the Police Inspector,
Udgir Rural Police Station,
Tq.Udgir, Dist.Latur. ..Respondent

...
Advocate for Applicant : Shri A.N.Sabnis
PP for Respondent : Shri D.R.Kale
Advocate for Informant : Shri G.R.Syed
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**BAIL APPLICATION NO.621 OF 2021
WITH APPLN/1304/2021 IN BA/621/2021**

Shri Shaantveer S/o Hanmant Biradar
Age: 34 years, Occu.: Agri.,
R/o. Malkapur, Tq.Udgir,
Dist.Latur. ..Applicant

VERSUS

The State of Maharashtra,
Through: In-charge Police Inspector,
Udgir (R) Police Station, Udgir,
Tq.Udgir, Dist.Latur. ..Respondent

...
Advocate for Applicant : Shri V.D.Sapkal, Senior Counsel i/b.
Shri Laxmikant C. Patil
PP for Respondent : Shri D.R.Kale
Advocate for Informant : Shri G.R.Syed

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CORAM : M.G.SEWLIKAR, J.

DATE: 3rd September, 2021

PER COURT:-

1. All these applications are disposed of by a common order as they arise out of the same crime.
2. These are the applications under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail.
3. Prosecution's case is that the accused Tanaji Phule had given loan to the deceased Shafi Ahmed Sayyad. Kararnama to that effect was also executed by deceased Shafi. Amount was to

be repaid within six months from the date of execution of agreement. Since the amount was not paid, accused Tanaji was insisting on the deceased to pay the amount. Since the deceased was unable to pay the amount, accused Tanaji accompanied by all the three present applicants assaulted the deceased at Tondar Chowk. Accused Tanaji delivered a blow of iron rod on the head of the deceased. Applicants are alleged to have beaten the deceased by means of sticks and hockey stick. It is alleged that hockey stick was used by applicant Mahesh Gurunath Biradar. Other applicants are alleged to have assaulted the deceased by means of sticks.

4. This incident was witnessed by the informant, who is cousin of the deceased. The incident took place on 13th January, 2021 at around 08:00 p.m. First Information Report came to be lodged on 17th January, 2021, on the basis of which Crime No.0040 of 2021 under Sections 302, 307, 504 read with Section 34 of the Indian Penal Code and under Sections 39, 45 and 46 of the Maharashtra Money Lending (Regulation) Act, 2014 came to be registered with Udgir Rural Police Station, Dist.Latur.

5. Charge-sheet has been filed. Applicants were arrested on 20th January, 2021.

6. Heard Shri V.D.Sapkal, learned Senior Counsel instructed by Shri L.C.Patil, learned counsel for the applicant in Bail Application No.621 of 2021, Shri S.P.Brahme, learned counsel holding for Shri L.C.Patil, learned counsel for the applicant in Bail Application No.620 of 2021 and Shri A.N.Sabnis, learned counsel for the applicant in Bail Application No.608 of 2021, Shri G.R.Syed, learned counsel for the Informant and Shri D.R.Kale, learned Public Prosecutor for the respondent-State.

7. All the counsel for the applicants submitted that the accused Tanaji Phule had the motive to commit offence. As per prosecution's case, accused Tanaji had lent an amount of Rs.5,00,000/- to the deceased. Since this amount was not paid, the accused Tanaji had a grudge against the deceased. Applicants had no concern with this transaction. Therefore, they cannot be said to have any common intention with accused Tanaji. They further submitted that the statement of Dr.Nitin Govindrao Gurude shows that Tanaji himself had admitted the deceased in the hospital and had paid Rs.3,000/- for the treatment of the deceased by PhonePe App. They further submitted that this shows that Tanaji had no intention to commit the murder of the deceased. Role of the applicants is only to the extent of causing injuries to the deceased. But the medical

evidence belies the story of the prosecution in this respect. They further submitted that cause of death is head injury. The applicants did not deliver any fatal blow. Since charge-sheet is submitted, the applicants be released on bail.

8. Shri Kale, learned Public Prosecutor submitted that offence is serious in nature. The deceased was assaulted by all the applicants. Motive is a state of mind. Many a times it cannot be discerned. This shows that they shared a common intention.

9. Shri G.R.Syed, learned counsel for the informant submitted that the statement of brother of deceased Shafi Ahmed Sayyad has been recorded. The said statement shows that Tanaji, applicants Mahesh Gurunath Biradar (applicant in Bail Application No.620 of 2021), Rajkumar @ Maroti S/o Laxman Biradar (applicant in Bail Application No.608 of 2021) and Shaantveer s/o Hanmant Biradar (applicant in Bail Application No.621 of 2021) had assaulted him on account of non-payment of money by his brother-deceased Shafi. He submitted that witnesses do not come forward to depose against Tanaji and the applicants as they have created reign of terror in the village. Therefore, he prayed for rejection of the applications.

10. Cause of death as per the post mortem report is death due to head injury.

11. The statements of the witnesses recorded by the Investigating Officer show that soon after the incident, the deceased was carried by accused Tanaji in his four wheeler. Statement of Dr.Nitin Govindrao Gurude shows that the deceased was taken to the hospital of Dr.Gurude by one person. He had paid online payment of Rs.3,000/- from his Phonepe App account and at that time he saw the name of the person making the payment as Tanaji Phule. They had shifted the deceased to hospital of Dr.Kalyani. Statement of Iliyaz Thodage, the auto driver shows that one unknown person aged 25-30 years had asked him to shift the injured to Dhanwantari Hospital, Udgir in his auto. The injured was sitting in his Auto and Auto was taken to Dr.Kalyani's Hospital. Thereafter, injured was to be taken to Dhanwantari Hospital, Udgir. On the way to Dhanwantari Hospital, the boy sitting in the Auto got down and ran away on the vehicle following the Auto. Thereafter, he admitted the said injured in the Hospital of Dr.Kalyani. Dr.Kalyani advised him to take the deceased to Dhanwantari Hospital, Udgir. Same is the statement of Dr.Kalyani.

12. On the basis of these statements, it is axiomatic that soon after the incident, the deceased was taken to the hospital by Tanaji, the prime accused. It appears that the applicants had also accompanied him.

13. So far as role of the accused/applicants herein is concerned, the applicant Mahesh Gurunath Biradar (applicant in Bail Application No.620 of 2021) is alleged to have delivered a blow of hockey stick and other accused/applicants are alleged to have delivered a blow of sticks to the deceased. However, post mortem report states that deceased died due to head injury.

14. Thus, from the entire conspectus of the evidence, it cannot be said that the applicants had delivered fatal blow to the deceased. Charge-sheet is filed. Nothing is brought on record to show that the applicants have criminal antecedents. They are permanent residents of village Haibatpur and Malkapur. They will be available for trial. Considering the pandemic situation created due to Covid-19, trial is not likely to be concluded in near future. In this view of the matter, case is made out for releasing the applicants on bail.

ORDER

- i) Bail Application Nos.608 of 2021, 620 of 2021 and 621 of 2021 are allowed.
- ii) Each of the Applicants be released on P.R.Bond of Rs.35,000/- with one solvent surety in the like amount, in connection with Crime No.0040 of 2021, registered with Udgir Rural Police Station, District Latur, under Sections 302, 307, 504 read with Section 34 of the Indian Penal Code and under Sections 39, 45 and 46 of the Maharashtra Money Lending (Regulation) Act, 2014, and on condition that they shall stay away from the village limits of Haibatpur till the conclusion of the trial.
- iii) The applicants shall furnish their mobile numbers to the Police Station concerned.
- iv) Bail Applications are disposed of.
- v) Criminal Applications filed for assist to Public Prosecutor are also disposed of.

(M.G.SEWLIKAR)
JUDGE