

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

922 BAIL APPLICATION NO.830 OF 2021

1. VALMIK RAMKRISHNA PATIL
2. AABA BHARAT PATIL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Chatterji Joydeep
APP for Respondents/State : Mr. S.D. Ghayal
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CORAM : M.G. SEWLIKAR, J.
DATE : 6th October, 2021

PC.:-

This is an application under Section 439 for releasing the applicants on bail for the offence punishable under Section 302, 394, 364 of the I.P.C. vide Crime No.90 of 2020 registered with Erandol Police Station, District Jalgaon.

2. Facts giving rise to this application are that the deceased was the husband of the informant. On the date of the incident i.e. on 09.12.2020 at about 3.30 am, the deceased had switched on the light and he was about to leave the house. At that time the son of the informant asked him as to where he was going. The deceased replied that he was going out for a walk and would be back within 15 to 20 minutes. He had taken his wallet and cell

phone with him. At 8.00 am, the informant tried to contact the deceased on his cell phone no.7030887190 but no contact could be established as it was switched off. At 9.30 am, she received information from neighbour Anita Pawar that the dead body of deceased was found in the field of one Liladhar Patil at Palasdal village. When she was shown the dead body at Rural Hospital, Erandol she noticed that the clothes of the deceased were tattered, he had sustained multiple injuries and his cell phone, wallet and shoes were also missing. She lodged the report against unknown persons. Accordingly, FIR as aforesaid was registered.

3. After completion of the investigation and after the disclosure of the offence, charge-sheet came to be filed against the applicants.

4. Learned counsel Shri Chatterji for the applicants submit that the charge-sheet reveals that the entire role seems to have been ascribed to the applicant no.2. He submits that the only evidence available against the applicants is identification parade. In the identification parade witness Chetan Thakur identified applicant no.2, whereas, witness Sharad Choudhari identified both the applicant nos.1 and 2. He further submits that this identification parade does not carry any weight as it was a delayed identification parade. The incident had taken place on 09.12.2020, whereas the identification parade was held on 22.01.2020 i.e. almost one and half

months after the incident. He further submits that nothing has been recovered from applicant no.1. He submits that the record shows that the deceased was being beaten just for the sake of robbery. They had no intention to commit the murder of the deceased and no weapons were used during the commission of the offence. They only wanted the wallet and cell phone from the deceased. He submits that considering the nature of the evidence collected by the prosecution the applicants are entitled to be released on bail.

5. Learned APP Shri Ghayal submits that the prosecution witnesses are consistent on the point that two persons were beating the deceased. Applicant nos.1 and 2 were identified by witness Sharad Choudhari and applicant no.2 was identified by witness Chetan Thakur. He submits that it is a case of road robbery with murder. Cell phone has been recovered from applicant no.2. There is clear evidence to show that applicant nos.1 and 2 were beating the deceased. In view of this evidence, the application deserves rejection.

6. From the charge-sheet, it appears that the deceased had left the house at 3.30 am, it also appears that somewhere between 3.30 am and 9.00 am the incident appears to have taken place. The testimony of witness Chetan Thakur clearly shows that two persons were beating a fat person. He tried to rescue the deceased. One of them was asking for cell phone from the said fat

person i.e. the deceased. The charge-sheet further shows that Chetan Thakur identified applicant no.2. Another witness is Sharad Choudhari. He has stated in his statement under Section 161 of the Cr.P.C. that on 09.12.2020 at 4.15 am to 4.30 am he had come out of the shop for brooming at that time he saw one tall man and another short man beating a fat person of about 25 to 30 years of age. Both of them dragged the said fat man towards Pawar complex and thereafter he saw those two unknown persons carrying the fat man on the motorcycle. The said fat man i.e. the deceased was imploring loudly not to beat him and to save him.

7. It is pertinent to note that the deceased had multiple injuries i.e. 19 injuries. The incident took place somewhere between 3.30 am and 9.00 am. It is true that last seen theory is a weak piece of evidence. It is trite that the last seen theory comes into play when the time gap between the point of time when the deceased and accused were last seen and when the deceased was found dead is so small that the possibility of any person other than the accused being the perpetrator of the crime is inconceivable. In the case at hand the time gap between the deceased and accused were last seen and when the deceased was found dead is so minimal that the possibility of any person other than the accused being the perpetrator of the crime does not exist. As stated earlier the deceased and the accused were last seen at 4.15

am and 4.30 am and the deceased was found dead at 9.30 am. Therefore, five hours is not so large a gap as to entertain the possibility of any person other than the applicants being the perpetrator of the crime. There is no explanation from the applicants as to how they parted with the company of the deceased. Therefore, considering the nature of the injuries and the identification of the applicants by the witnesses and the testimonies of the two eye witnesses, I am not inclined to grant any relief to any of the applicants. Application is, therefore, bereft of any substance. Application is, therefore, rejected.

8. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]