

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

943 BAIL APPLICATION NO.986 OF 2021

1. VINOD VAHRYA PAWARA
2. ARJUN VAHRYA PAWARA
3. SABRYA @ SHARAD JERMAL PAWARA
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Jain Priteshkumar N & V.C. Patil Ashtekar
APP for Respondents/State : Mr. S.D. Ghayal
...

CORAM : M.G. SEWLIKAR, J.
DATE : 26th October, 2021

PC.:-

Heard.

2. This is an application under Section 439 of the Cr.PC.
3. It is alleged that accused nos.1 to 4 on 22nd March, 2021 between 8.30 pm and 10.00 pm trespassed into the house of the deceased-Shevabai and started snatching her silver ornaments. Deceased-Shevabai offered resistance. Accused realised that the deceased had identified them and therefore accused Veersingh mounted on the chest of the deceased-Shevabai and made her defenceless by holding her both the hands. Accused Sabrya @ Sharad assaulted the deceased by means of a sickle and accused Arjun Pawara

assaulted deceased-Shevabai by means of a spade. A three month daughter of Shevabai started crying and therefore accused Arjun killed her by means of a handle of spade.

4. Neighbour of deceased-Shevabai entered the house of the deceased and found that the deceased was lying in a pool of blood. He reported the matter to the police on the basis of his information offence under Section 460 read with Section 34 of the I.P.C. came to be registered against unknown persons.

5. Sniffer dog was called. Sniffer dog traced accused-Veersingh on the basis of memorandum statement of accused Veersingh, role of applicants was discerned.

6. Heard Shri Jain learned counsel for the applicant and Shri Ghayal learned APP for the State.

7. Shri Jain submits that except memorandum statement, prosecution could not collect any evidence against the applicants. No recovery is made against the applicants. Therefore, there is no evidence against the applicants to connect them with the offence. Learned APP Shri Ghayal submits that offence is serious in nature. Therefore, they do not deserve any discretion to be exercised in their favour.

8. Charge-sheet is filed. Therefore, physical custody of applicants is not warranted. On perusal of the charge-sheet, it appears that the only evidence against the applicants is the memorandum statement given by accused Veersingh. The role of the applicants came to be revealed only on the basis of memorandum statement by the accused Veersingh. The portion of memorandum statement which is confessional in nature is inadmissible. There is no other corroborative evidence to connect the applicants. No recovery is effected from the applicants. They do not have any criminal antecedents. This is their first offence. They have fixed place of residence, therefore, they are not likely to flee from justice. In this view of the matter, the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicants be released on PR bond of Rs.40,000/- each with one solvent surety in the like amount each, in connection with Crime No.126 of 2021 under Section 460 read with Section 34 of the I.P.C. registered with Dhadgaon Police Station, District Nandurbar.
- III) 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.