

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

930 BAIL APPLICATION NO.1041 OF 2021

1. Harishchandra Bajirao Bande,
Age - 30 Yrs, Occu – Agriculture,

2. Swapnil Bhima Bande,
Age -19 Yrs, Occu – Agriculture,

Both R/o. Khadki (Bk),
Tal – Akole, Dist. Ahmednagar.

.... APPLICANTS

VERSUS

The State of Maharashtra
Through Police Station In-charge,
Rajur Police Station, Tal – Akole,
Dist. Ahmednagar.

... RESPONDENT

Shri. Vinod Y. Bhide, Advocate for the applicants
Shri. P. G. Borade, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

DATED : 07 OCTOBER, 2021

PER COURT :-

1. Heard.

2. Informant is the father of the deceased Walu Bhagwanta Bande. He has two more sons by the names of Balu Bhagwanta Bande and Kalu Bhagwanta Bande.

3. It is alleged in the FIR that on 5th May, 2021 at 7 p.m. son of the informant by the name of Kalu came home and told the informant that he and accused Bhima had a quarrel at the time of lunch. On 6th May, 2021 at 7.00 p.m. when the informant was sitting in his courtyard alongwith his three sons, accused Bhima Bande, applicant Harishchandra Bande and applicant Swapnil Bande came there. Accused Bhima and applicant No. 1 Harishchandra were armed with iron pipe and applicant No. 2 Swapnil was armed with a stick. They started assaulting the informant and his sons. Applicant Harishchandra and accused Bhima dealt blows of iron pipe on the head of the deceased Walu. Applicant Harishchandra and accused Bhima delivered blows of iron rod on the palm of injured Kalu. Applicant No. 2 Swapnil also delivered a blow of stick on the head of Balu. The deceased Walu was lying motionless, owing to which he was rushed to the hospital. On arrival, the doctors declared him dead. This incident is dated 6th May, 2021. FIR came to be lodged on 7th June, 2021 i.e. after more than one month of the incident.

4. Learned counsel Shri. Bhide for the applicant submits that the allegations in the FIR and the testimonies of the witnesses indicate that the deceased was assaulted on head by all the three accused. However, PM report is conspicuously silent about the injury on head. He further submits that the testimonies of the witnesses implicate only accused Bhima as the sole author of the murder of the deceased. He further submits that iron rod is recovered only from accused Bhima and stick is also recovered from accused Bhima. He submits that this clearly shows that applicant Nos. 1 and 2 had no role to play in the alleged murder of the deceased.

5. Learned APP Shri. Borade submits that witnesses state that applicant Nos. 1 and 2 had also assaulted the deceased. He further submits that the incident took place on account of a trivial incident happened on 3rd May, 2021. He submits that considering the seriousness of the offence applicants do not deserve to be released on bail.

6. Charge-sheet is filed. Therefore, further detention of the applicants is not necessary. At the outset it needs to be mentioned that there is delay of one month in lodging the FIR for which no explanation howsoever is forthcoming. PM report shows the cause of death as head injury. However, inquest panchnama and PM report do not denote that the deceased had any head injury. Testimonies of witnesses Balu Bhagwanta Bande and Yamnua Balu Bande denote that fatal blow was given by accused Bhima Bande to the deceased Walu. Nothing is recovered from applicant Nos. 1 and 2. Having regard to the nature of evidence collected against the applicant by the prosecution and the delay in lodging the report case for bail is made out. In view of this, following order is passed.

ORDER

1. Application is allowed.
2. Each of the applicants be released on bail on their furnishing PR bond of Rs. 25,000/- (Rupees Twenty Five thousand only) with one solvent surety in the like amount in connection with CR No. 86 of 2021 under Sections 302, 324

read with Section 34 of the Indian Penal Code registered with Rajur Police Station, Tal. Akole, Dist. Ahmednagar.

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp