

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1462 OF 2020

1. Babu s/o Tukaram Jangwad
 2. Dhanraj s/o Tukaram Jangwad
- ... **Applicants**

Versus

1. The State of Maharashtra
 2. Sau. Anusayabai w/o Baban @ Jalba Papulwad
- ... **Respondents**

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Mr. S. V. Kurundkar, Advocate for applicants.
Mr. S. B. Narwade, APP for respondent No.1.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 23rd February, 2021
Pronounced on : 5th April, 2021

ORDER :-

1. Present applicants are original accused Nos.2 and 3, who came to be arrested on 02.05.2020 in connection with Crime No.199 of 2020 registered with Bhokar Police Station, Dist. Nanded for the offences punishable under Sections 307, 302 read with 34 of Indian Penal Code. They have filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. V. Kurundkar for applicants and learned APP Mr. S. B. Narwade for respondent No.1.

3. It has been vehemently submitted on behalf of applicants that though the applicants had filed Bail Application No.907 of 2020 before this Court, it came to be withdrawn by them on 06.10.2020 when it was told that the trial would be expedited. Accordingly, directions were given to the Trial Court to dispose of the case expeditiously on priority basis by giving day-to-day hearing, if possible, after the normal Court functioning begins. However, there is no progress in the matter, and therefore, they have no option but to come again before this Court. In fact, in such pandemic situation, no full fledged functioning of the civil as well as criminal Courts is going on and, therefore, applicants have been kept behind bars. On merits also, they have good case. The FIR has been lodged by present respondent No.2 in respect of death of her husband. At the time of registration of offence, it was only under Section 307 read with Section 34 of Indian Penal Code. She had come with the story that when her husband was in the field at about 4.00 p.m. on 01.05.2020, he is being assaulted by the present applicants and two more persons i.e. Balaji Babu Jangwad and Santosh Lingoji Gadewad. He told that they have administered medicine to him and he will not survive, therefore, the informant along with her father-in-law and brother-in-law went to the field. They made arrangements to shift the husband of the informant to hospital and there upon, she had lodged the

report. If the postmortem report is perused, it shows that there is only single injury mentioned in Column No.17 i.e. therapeutic intravenous puncture mark present on right hand, dorsal surface. It is impossible that four persons without using any force would have administered poison to the deceased. Further, the said postmortem report reveals that the opinion was reserved as some greenish fluid was noted by the doctors. The report of the chemical analyzer would indicate that there is no poisonous substance found in the viscera. This shows that the doctors had performed the postmortem without application of mind. It is also submitted on behalf of applicants that there are no eye witnesses to the incident. Investigation is already over and the case is committed. Taking into consideration the report of chemical analyzer, it can be certainly said that the trial is destined to acquittal and, therefore, there is no point in keeping the present applicants behind bars. The learned Advocate for applicants strongly canvassed for releasing the applicants on bail.

4. Per contra, learned APP strongly opposed the application and submitted that there is no change in the circumstance after the applicants had withdrawn their Bail Application No.907 of 2020. At that time, the learned Senior Counsel was heard for sometime and then he had taken that view to withdraw the application and it was represented

to the Court that if directions are given to expedite the trial, then that would suffice. There is ample evidence against the present applicants. There are statements of witnesses saying that there was enmity between the present applicants and the deceased. There is also statement made by the deceased to those witnesses disclosing that these four persons had administered poison to him. Statements of witnesses under Section 164 of the Code of Criminal Procedure definitely disclose the said fact. The final cause of death is "Poisoning with Cerebropulmonary oedema". Though the CA report is stated to be negative for the poisoning, yet, doctor opines the said fact. It is to be noted that the incident had taken place on 01.05.2020 and deceased had expired on 02.05.2020. It would be for the prosecution to prove that though the chemical analyzer's report is against them, yet, death of Baban Vitthal Papulwad was homicidal in nature. Therefore, the applicants do not deserve sympathy.

5. At the outset, it is to be noted that when Bail Application No.907 of 2020 was before this Court, it was filed on behalf of all the four accused persons. After hearing learned Senior Counsel for applicants for sometime, this Court on 06.10.2020 in the order has observed that the learned Senior Counsel, appearing for the applicants, on instructions, seeks leave to withdraw the application. That means, this Court appears to have not shown any kind of inclination to grant any of the reliefs, but

then a request was made that since the applicants are from one family and behind bars since long, necessary directions may be given to the Trial Court to dispose of the case expeditiously. Under such circumstance, the leave was granted. The application came to be withdrawn, however, directions came to be given to the learned Trial Judge to dispose of the case expeditiously on priority basis by giving day-to-day hearing, if possible, after the normal Court functioning begins. Definitely, during the pandemic situation, there would not have been much progress in the case for the simple reason that there was a Standard Operating Procedure that was operating for the District Judiciary also. Physical presence of the accused persons could not have been secured and under such circumstance, the trial could not have made much progress. Important point to be noted is that the said report of the chemical analyzer, which is in the negative that means the general and specific chemical testing does not reveal any poison in the viscera, was there on record when the matter was heard on 06.10.2020, still instead of completing entire submissions, “after disinclination is shown”, though these words are not appearing in the order, the learned Senior Counsel, on instructions, has withdrawn that application. Under such circumstance, thereafter, when there is no change, the present application cannot be considered at all.

6. Even if for the sake of arguments we take that still the matter has to be disposed of on merits, no doubt, it appears that the chemical analyzer's report say that there is no poison in the viscera. However, after the inquiry was made, it appears that the statement has been recorded of the medical officer now, that when Baban was admitted in the hospital, he was not in a position to give statement, but it was told to the hospital authorities that there is consumption of poisonous substance. The concerned doctor has stated that he had not taken stomach wash. Thereafter, another doctor Kapil More has stated that when the history was given and he found the same symptoms which are there in a poison case, he had inserted tube and there was therapeutic intravenous puncture. All those symptoms were that of patient of poisoning and, therefore, they had given treatment to Baban on that line. Now, it is to be noted that the prosecution in this case is required to make much efforts to prove the case that Baban was poisoned, however, at this stage, the evidence that is strongly going against the present applicants is the statements of witnesses to whom the deceased Baban had conveyed that poison had been administered by these four accused persons to him. The medical officer is also supporting the theory of poison. Statements of witnesses under Section 164 of the Code of Criminal Procedure are consistent with the FIR.

7. It has been tried to be pointed out by the learned Advocate for the applicants that some witnesses have stated that Baban himself had consumed poison. Statements of witnesses Vilas Chavan and Ashwijiit Waghmare are on the same line, but there are contrary statements of other witnesses also. Further, there are statements under Section 164 of the Code of Criminal Procedure given by Madhav Vitthal Papulwad, who appears to be the brother of the deceased, Dadarao Gangadhar More and Vitthal Jalba Papulwad, which are supporting the prosecution. Therefore, taking into consideration this aspect also, the applicants do not deserve to be released on bail. The trial is already expedited and under this circumstance, no more relief can be given to the applicants. Hence, application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

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