

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1214 OF 2021
WITH APPLN/2549/2021 IN BA/1214/2021

BABUSING S/O SHANKARSING PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Mr. P. P. More, Advocate for the applicant.
Mr. N. T. Bhagat, APP for the respondent – State.
Mr. A. R. Lukhe, Advocate for the original informant.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09.12.2021

ORDER :-

. Criminal Application No.2549 of 2021 filed by the original informant seeking permission to assist public prosecutor is hereby allowed and disposed of.

2. Present applicant has been arrested by Ghansawangi Police Station, Dist. Jalna in connection with Crime No.224 of 2021 for the offences punishable under Sections 302, 34 of Indian Penal Code.

3. Heard learned Advocate Mr. P. P. More for the applicant and learned APP Mr. N. T. Bhagat for the respondent – State well assisted by learned Advocate Mr. A. R. Lukhe for the original informant. In order to

cut short, it can be said that they have made submissions in support of their respective contentions.

4. The First Information Report has been lodged by one Dnyaneshwar Chavan of Sarafgavhan village. Informant's brother Kailas used to sell articles from handcart. He had purchased house from one Nandu Pawar about three years ago. Raju Babusingh Pawar i.e. son of present applicant objected that transaction, because he wanted to purchase the said house as it was adjacent to the house of the present applicant. Present applicant and his son Raju used to pickup quarrel with Kailas on one or the other ground and used to give him threat to kill. The informant says that on 28.06.2021, at about 8.30 p.m., informant was talking with his cousin brother and he could see that at a distance, present applicant and his son Raju was quarreling with Kailas. Informant and his cousin brother were proceeding towards Kailas when they saw that Kailas was caught hold by present applicant and Raju gave blow of spade on the head of Kailas twice. When informant running towards his brother, present applicant and his son fled away from that place. Informant could see that his brother had sustained bleeding injury and was almost dead at the spot. He was taken to hospital, however, was declared dead there and then the informant lodged the report. Thus, it can be seen that the present applicant had facilitated, as

per the prosecution story, accused Raju to inflict blow on Kailas. The postmortem report shows that there was cut lacerated wounds at three places on the head of deceased. Column No.18 shows that the skull was fractured. Internal examination shows multiple fractures of skull, diffuse hemorrhage over the parietal and occipital lobe. The probable cause of death has been stated as injury to the scalp leading to multiple fractures of partly parietal and occipital bone each and leading to crushing of parenchymal matter of brain. This indicates that how forcibly the blow would have been given. There are eye witnesses to the incident and their statements have been recorded. One important aspect that has been argued in this matter is that accused No.2 i.e. Raju is stated to be mentally challenged person. There is evidence to the effect that he is mentally challenged. Learned Advocate for the applicant submits that, in fact, because of the mental condition of his son, the applicant has been involved falsely whenever any act used to be done by his son. Accused Raju is suffering from mental illness since 2001 and was under the treatment of psychiatrist. The applicant is 74 years old person and could not have done any act against the deceased.

5. Even if we take that accused No.1 who appears to be mentally challenged person and has been sent for treatment with mental asylum, what evidence come before this Court is that the present applicant was

holding Kailas in order to facilitate Raju to inflict blows. If the present applicant wanted to rescue Kailas, his actions would have been different. He could have asked Kailas to run away and would have stopped Raju from inflicting blows. As aforesaid, the condition of the dead body i.e. the injuries those were appearing on the person of the deceased, would indicate sufficiently that the deceased might not have got opportunity to run away and, therefore, the present applicant cannot be given benefit of the mental condition of his son. No case is made out to release the applicant on bail. Hence, the application stands rejected.

6. Liberty is granted to the applicant to make an application before the Trial Court for expediting the trial of the case in view of his advanced age.

[SMT. VIBHA KANKANWADI, J.]

scm