

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1412 OF 2020

Vaman s/o Maruti Nagargoje,
Age 38 years, Occupation Agriculturist,
R/o Vagdeo Vadi Tq. Gangakhed
District Parbhani.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
Gangakhed Police Station,
Gangakhed Tq. Gangakhed
District Parbhani.

...Respondent

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Senior Counsel for Applicant : Mr. V. D. Sapkal i/b
Advocate Mr. P. D. Bachate.
APP for Respondent-State : Mr. N. T. Bhagat
Advocate for Assist to APP : Mr. M. P. Kale

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WITH
CRIMINAL APPLICATION NO.2351 OF 2020
IN B.A.NO.1412/2020

Ravindra s/o Trimbakrao Munde,
Age 27 years, Occupation Business,
R/o Sant Janabai Nagar, Gangakhed
Tq. Gangakhed Dist. Parbhani.

...Applicant

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Gangakhed Police Station,
Gangakhed Tq. Gangakhed
District Parbhani.
- 2) Vaman s/o Maroti Nagargoje,

Age 37 years, Occupation Agri.,
R/o Waghdeowadi Tq. Gangakhed
District Parbhani. **(Ori.Accused)**

...Respondents

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Advocate for Applicant : Mr. M. P. Kale
APP for Respondent No.1-State : Mr. N. T. Bhagat
Senior Counsel for Resp.No.2: Mr. V. D. Sapkal i/b
Advocate Mr.P.D.Bachate.

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**WITH
BAIL APPLICATION NO.1487 OF 2020**

Murli @ Murlidhar s/o Maroti Nagargoje,
Age 45 years, Occupation Agriculturist,
R/o Vagdeo Vadi Tq. Gangakhed
District Parbhani.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
Gangakhed Police Station,
Gangakhed Tq. Gangakhed
District Parbhani.

...Respondent

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Senior Counsel for Applicant : Mr. V. D. Sapkal i/b
Advocate Mr.P.D.Bachate.
APP for Respondent-State : Mr. N. T. Bhagat
Advocate for Assist to APP : Mr. M. P. Kale

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**WITH
CRIMINAL APPLICATION NO.2492 OF 2020
IN B.A.NO.1487/2020**

Ravindra s/o Trimbakrao Munde,
Age 27 years, Occupation Business,
R/o Sant Janabai Nagar, Gangakhed
Tq. Gangakhed Dist. Parbhani.

...Applicant

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Gangakhed Police Station,
Gangakhed Tq. Gangakhed
District Parbhani.
- 2) Murali @ Murlidhar s/o Maroti
Nagargoje,
Age 40 years, Occupation Agri.,
R/o Waghdeowadi Tq.Gangakhed
District Parbhani. **(Ori.Accused)** **...Respondents**

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Advocate for Applicant : Mr. M. P. Kale
APP for Respondent No.1-State : Mr. N. T. Bhagat
Senior Counsel for Resp.No.2: Mr. V. D. Sapkal i/b
Advocate Mr.P.D.Bachate.

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CORAM : SMT.VIBHA KANKANWADI, J.**DATE OF RESERVING THE ORDER :
14-01-2021****DATE OF PRONOUNCING THE ORDER:
09-02-2021****ORDER :**

1. Criminal Applications No.2351 of 2020 and 2492 of 2020 have been filed for assist to learned Additional Public Prosecutor in Bail Applications No.1412 of 2020 and 1487 of 2020 respectively.
2. Permission granted.

3. Hence, Criminal Application No.2351 of 2020 and 2492 of 2020 stand allowed and disposed of accordingly.

4. Both the applicants in bail applications have been arrested in connection with Crime No.365 of 2020 dated 30-07-2020, registered with Gangakhed Police Station District Parbhani for the offences punishable under Section 302, 307, 354-A, 324, 504, 506, 143, 147, 148, 149, 120-B of the Indian Penal Code, Section 135 of Maharashtra Police Act , and under Section 4/25 of Arms Act. Both the applicants have been arrested on 29-10-2020. They have filed present applications under Section 439 of Code of Criminal Procedure.

5. Heard learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. P. D. Bachate for applicants and learned Additional Public Prosecutor Mr. N. T. Bhagat well assisted by learned Advocate Mr. M. P. Kale.

6. It has been vehemently submitted by learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. P. D. Bachate for applicants that initially the offence was registered under Section 307 of Indian Penal Code on the basis of the First Information Report lodged by Trimbak Maroti Munde who was 60 years old person. He

himself was injured and later on succumbed to those injuries. Perusal of the First Information Report lodged by him would show that all the acts attributing to the assault to him as well as to his both daughters are by accused No.1 Dipak Munjaji Nagargoje with the help of scythe. As regards the present applicants are concerned, he has stated that they were present and were instigating Deepak and accused No.2 Munjaji for assaulting them. Munjaji is stated to have assaulted by informant with the help of stick. The incident has stated to have taken place at about 08.00 p.m. on 28-07-2020. Informant was taken to Spandan Hospital, Parbhani and thereafter, he expired at about 01.00 a.m. on 12-08-2020. The post mortem report gives probable cause of death as, "Bilateral pulmonary consolidation in a treated case of multiple injuries." His both daughters are also stated to be assaulted with scythe by Deepak. The statement of these two daughters would show that along with Deepak and Munjaji, present applicants and other two persons had come, all of them had sticks. Deepak had given blow with iron scythe to their father as well as to them, and then they say that, they were assaulted by sticks. Statement of eye-witness Mahesh Chandrashekhar Munde would show that though he has disclosed the acts of Deepak and Munjaji, yet he has not even disclosed the presence of both the applicants. Another eye-witness Akash

Mahadeo Munde states in his supplementary statement that when he saw that the informant and his daughters were injured, at that time Munjaji was dragging Deepak and asking him as to why he has picked up quarrels. At that time applicant Vaman came along with Scorpio and all of them sat in that vehicle and went. He has not attributed any act to the present applicants. Another eye-witness Swaraj Balaji Munde is attributing all the acts of assault by Deepak. Thus, the role attributed to the present applicants will not attract either Section 302, 307 or 354-A or 324 of Indian Penal Code.

7. It has been further submitted by the learned Senior Counsel that the investigation is over and charge-sheet is filed, therefore the physical custody of the applicants is not required. Though there are criminal antecedents of the applicants, yet it can be seen from the record that they have been acquitted of all the cases which were instituted against them. Only one case for the offence under Section 279 of Indian Penal Code appears to be pending, however that cannot be taken as a criminal antecedents. He relied on the decision in, *Maulana Mohammed Amir Rashadi v. State of Uttar Pradesh and Another*, reported in (2012) 2 Supreme Court Cases 382, wherein it has been held that,

"The relevant considerations in this case are : (i) the

accused has been in jail since 24-8-2009, (ii) trial had commenced by examining two prosecution witnesses, (iii) and assurance by the State that trial will not be prolonged and concluded within a reasonable time, and (iv) the High Court while granting bail has imposed several conditions for strict adherence during the period of bail. The High Court has made it clear that in case of breach of any of the conditions, the trial court will have liberty to take steps to send the accused to jail again. The appellant is free to inform the trial court if he receives any fresh threat from the accused or from his supporters, and the trial court is free to take appropriate steps as observed by the High Court. The trial court must complete the trial within four months from receipt of the order. Hence, the grant of conditional bail is upheld.”

8. Per contra, the learned Additional Public Prosecutor well assisted by learned Advocate Mr. M. P. Kale vehemently opposed the application and submitted that the applicants had come along with Deepak and father Munjaji at 08.00 p.m. Deceased was a retired teacher. He was leading a happy life after his retirement, but then Deepak picked up quarrel on the count that why informant's son Ravi was talking to his sister. When the informant started asking them as to what were they have with Ravi at night time, and they

can speak about it in the morning after Ravi would be called. Deepak got annoyed and assaulted the informant on his left thigh with the scythe used for sugarcane cutting. Thereafter, by saying that he would kill the informant, he again tried to give blow to the informant which informant tried to resist, and therefore, he had sustained injuries to his left thumb and near left side of the neck. Munjaji had assaulted him by stick. When his two daughters came out side and tried to rescue the informant, the present applicants as well as Deepak abused them and Deepak with his ill intention caught hold of the hand of one daughter, dragged her towards him and uttered such words to outrage her modesty. When she tried to resist him, she was also assaulted on her both hands, leg and back with scythe. Munjaji then assaulted said daughter with stick. When another daughter went to rescue her sister, her modesty was also outraged by Deepak and she was also assaulted with scythe. Both the girls are saying that present applicants had come armed with sticks and they were assaulted by the present applicants by sticks. Though the main injuries to the informant deceased were by Deepak, yet the injuries caused to both the girls can be seen. They had sustained incised wounds, Contused Lacerated Wound and even at the time of their examination they have told to the Medical Officer that they were assaulted by scythe (Katti). The present applicants

are involved in many cases, and therefore, they have terror in the village. Definitely if they are released on bail, it would affect the moral of the witnesses and possibility that nobody would come forward to give evidence against the accused persons cannot be ruled out. The statements of the daughters of the informant recorded under Section 164 of Code of Criminal Procedure were also recorded and in those statements also they have specifically stated that the present applicants have assaulted them by sticks, therefore the applicants do not deserve any sympathy.

9. At the outset, it can be seen that the investigation is over and charge-sheet has been filed, therefore the further physical custody of the applicants is no longer required for the purpose of investigation. We are required to consider the evidence that is collected as against the present applicants. A fact is required to be borne in mind that a witness would state and it would be a relevant fact if he gives account of what he has seen or perceived. Many times it happens that though the witness is present there, he would be noting a particular fact and the another fact which is going on/ happening there itself, he may not be paying attention towards that happening. That does not mean that, that fact or that act never occurs. The best person to tell about such facts would be the person

with whom the thing takes place. Now the informant has mainly attributed the act to Deepak and Munjaji who had assaulted him with scythe and stick. Though he had seen Deepak giving blows of scythe to both the daughters, he has not stated about the act of the present applicants except that they were instigating Deepak and Munjaji. The two daughters of the informant in their statement under Section 161 and 164 of Code of Criminal Procedure have specifically stated that the present applicants had come with sticks and they were assaulted by the present applicants with sticks. Statement of witness Mahesh Munde would show that he is on the point of the earlier incident that is when Deepak concealed scythe in his shirt and the witness had knowledge that Deepak has intention to assault Ravi. He has specifically stated that when he went near the house of the informant along with Deepak, Deepak asked him as to where is Ravi and when the dialogues were going on between informant and Deepak, when the witness saw that Deepak took out scythe (Katti), he and another witness Dhanraj fled away from the spot. Therefore, he cannot be the witness for entire incident. He has stated what he had seen till he was at the spot. Same is the case with witness Akash Munde. He arrived at the house of the informant late when already informant and his daughters had sustained injuries. Further statement of witness Swaraj would show

that he was watching the activities from a distance, and when witness Mahesh came running towards him, they both took motorcycle and ran away from the spot. Under such circumstance, the evidence that is against the present applicants is that, the statements of the two injured persons and they say that the present applicants had assaulted them with sticks. Now the incident cannot be taken in isolation for the reason that it is stated that all of them had come together. The informant had received eight injuries which are all sutured. Further there appears to be fractures sustained by him. His lungs were got affected which shows the severity with which the injuries were caused.

10. As regards the criminal antecedents of the applicants are concerned, it is to be noted that in some matters the applicants have been released on bail and those cases are still pending before the Court. They are not acquitted from all those cases of which the list has been given. No doubt in view of *Maulana Mohammed Amir Rashadi's case (Supra)*, the criminal antecedents in certain circumstances may not be taken into consideration when proper conditions are imposed. But here taking into consideration the criminal antecedents, especially the cases under Section 307 of Indian Penal Code which are three in number, apart from the

present case, one under under Section 324 etc. of Indian Penal Code, two cases under Section 395 of IPC, under Section 364, 379 of IPC are against Murlidhar and against Vaman under Section 352, 307, 395 of IPC are there. It would definitely have an impact on the witnesses. From that angle the antecedents are required to be considered. If the release of the accused would create fear in the mind of the witnesses, then definitely that can be one of the additional ground to reject the bail applications. Under such circumstances, the manner in which the offence has been committed, the persons affected in the offence, the impact of the probable release of the applicants on the society is considered, therefore, this cannot be the fit case where the discretion should be exercised by the Court for releasing the applicants on bail. Hence, both the applications stand rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-