

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

915 BAIL APPLICATION NO.1562 OF 2020

SHUBHAM LAXMAN PATIL (RAJPUT) AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Mr. A.B. Girase, Advocate h/f Mr. P.D. Patil, Advocate for applicants
Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th FEBRUARY, 2021.

ORDER :

1 Present application has been filed by original accused Nos.2 and 4 for getting bail under Section 439 of the Code of Criminal Procedure, 1973. They have been arrested in connection with Crime No.162/2020 dated 24.06.2020 by Mehunbare Police Station, Dist. Jalgaon, for the offence punishable under Section 302, 364, 506 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. A.B. Girase holding for learned Advocate Mr. P.D. Patil for applicants and learned APP Mr. N.B. Narwade for the respondent.

3 It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. They are innocent boys having no criminal antecedents. They came to be arrested on 24.06.2020 and since then they are in custody. Now, the investigation is over and charge sheet is filed. Perusal of the First Information Report would show that it has been lodged by one Bharat Ashok Wagh, with whom the deceased was having friendly relations. Deceased had love affair with the sister of accused No.1 Pravin, which was not approved in the house of the accused No.1. Present applicants are stated to be the friends of accused No.1. Though the marriage of sister of accused No.1 was settled with another boy, it is stated that, he had contacted the would be bridegroom and told about their love affair. As a result of which, the said settled marriage was cancelled from the side of the bridegroom. Accused No.1 was annoyed with the said act of deceased and it is stated that along with the present applicants he had abused deceased and given threat to kill. The informant states that the incident had taken place at about 7.00 p.m. on 23.06.2020. He states that when he was along with deceased, all the four accused came on two motorcycles suddenly in front of them. Thereafter the present applicants caught hold of the deceased and accused No.1 assaulted with the help of chopper like knife in the stomach of deceased Rushikesh, by abusing and saying that he was responsible for the cancellation of marriage of his sister and he will kill him. When the

informant was about to save Rushikesh, Pravin dragged him on his motorcycle and took him for a distance. Informant chased him on his motorcycle and intercepted the motorcycle driven by accused No.1. At that time, accused No.1 gave him threat to kill. Present applicant No.2 was holding a fighter, at that time. Informant pelted stones to save and as a result of which, the accused persons left Rushikesh in injured condition, at that place. In a while, the other two friends of the informant came at that place and they made arrangements to take Rushikesh to hospital. Initially he was taken to Mehunbare Rural Hospital, but then he was shifted to Dhule Civil Hospital by ambulance, however, upon reaching Dhule the Doctors declared him dead.

4 The learned Advocate appearing for the applicants after pointing out the said FIR submitted that now the investigation is over and evidence has been collected. Statement of witness Dipak Gadhari has been taken, who runs a garage. In fact, it was the contention of the informant that he was present with the deceased in front of garage to get the repairing of his tractor. Dipak is mentioning the presence of informant, however, he has not stated the names of any of the accused persons. The novel method has been adopted by the police officer. All the accused persons after their arrest were shown to the witness in the Police Station and in such a way the

Identification Parade has been conducted, which is against the provisions of law. Perusal of other statements of the witnesses would show that each and every person has made substantial improvement. Even if their statements are taken as it is, the allegation against the present applicants is that they had caught hold of the deceased, when the accused No.1 is stated to have stabbed deceased. No weapon has been used by the present applicants. Witnesses have not stated that the present applicants have taken active part in abducting deceased. Under such circumstance, the further physical custody of the applicants is not necessary. It will take long time to stand the trial, and therefore, they be released on bail.

5 Per contra, the learned APP submitted that there is ample evidence against the present applicants. Informant himself is an eye witness and to whom threat was given. The applicants had come along with accused No.1 in furtherance of their common intention and before anybody can realize they had caught hold of the deceased and then accused No.1 had stabbed. When it has occurred within fraction of second of their arrival, it shows that they had earlier meeting of mind and after deciding to eliminate Rushikesh they had come at that place. Therefore, the acts attributed to the present applicants is equally important. Further, the injured, to whom about 2-3 stab wounds were given in the stomach, was taken on motorcycle, in that

condition by accused No.1 at a distance. This shows the cruelty that was going on in the mind of accused No.1. Further, it is hard to believe that only accused No.1 would have taken Rushikesh in injured condition on his motorcycle to the said place at a distance. Further, when the informant had chased them and intercepted the way, he was threatened by accused No.1 to kill. Present applicant No.1 was present there and he was holding fighter in his hand. The Post Mortem report would show that there were three stab injuries in the stomach of deceased and the probable cause of death has been given as – Death due to Haemorrhagic Shock due to injury to major abdominal blood vessels. Accused No.1 has discovered the murder weapon. The clothes on the person of present applicants have been seized. Therefore, when there is ample evidence against them showing their prima facie involvement in the commission of the crime, the applicants do not deserve to be released on bail.

6 At the outset, no doubt, that since the charge sheet is filed, it can be said that the further physical custody of the applicants is no longer required for the purpose of investigation. Now, it is required to be seen, as to what evidence has been collected against the present applicants. Informant himself is an eye witness and also to whom it is alleged that the accused No.1 had given threat to kill, as he has intercepted him and at that time the

present applicant No.2 was holding fighter in his hand. The threat can be by gesture also or even by the circumstances, under which the person would be put. No doubt, it appears from the record that said fighter has not been seized from the present applicant No.2. Yet, the presence of the present applicants at the place of first incident has also been stated by the other eye witnesses. There are many eye witnesses to the incident, especially the garage owner and the person who was serving in the garage as well as the other persons, who were nearby the said shop. There are separate witnesses to the place where the deceased was subsequently taken by abduction. Now, as regards the alleged novel mode adopted by police for getting the accused persons identified is concerned, it would be for the trial Court to decide and no statement can be made by this Court at this stage, which would affect the merits of the case. Taking into consideration the Post Mortem Report, which supports the story told by the informant and the witnesses and also the discovery of the weapon by accused No.1, there appears to be a prima facie case. Further, the role, that is, attributed to the present applicants at the first place, is that after they had come to the place in front of the garage, immediately the present applicants are stated to have caught hold of the deceased and then accused No.1 Pravin had given stab injuries in the stomach of the deceased. The role, that is, attributed to the present applicants is facilitating and there is an inference drawn by the learned APP

that this could have been done only by sharing common intention, and therefore, when there is prima facie case the applicants do not deserve discretionary relief. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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