

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 BAIL APPLICATION NO.1374 OF 2021

YOGESH SHESHRAO SAKHALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Nagargoje Prashant M.
APP for Respondent – State : Mr. V. M. Kagne
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.12.2021

ORDER :-

- . Present application has been filed under Section 439 of the Code of Criminal Procedure.
2. The applicant has been arrested in connection with Crime No.145 of 2021 registered with Ajintha Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 307, 504, 506, 34 of Indian Penal Code.
3. After giving the prosecution story, the learned Advocate for the applicant submits that the allegations in the FIR as well as the entire charge-sheet would reveal that the applicant assaulted deceased with bamboo stick. The situs chosen has not been given, when it is stated that accused Sandip, present applicant, accused Usha and Asha had

assaulted the deceased with bamboo stick. It is then sated that the present applicant and co-accused Asha and Usha had thereafter assaulted to one Sagar @ Santosh. The situs chosen is stated to be forehead and head. Digambar is the person who succumbed to the injuries and if we consider the injury certificate of Santosh, it states blunt trauma head and the scanned reports shows that there were two grievous injuries and one simple injury. The informant, who is the wife of deceased, claimed herself to be the eye witness, however, statement of another eye witness Vishnu would disclose that the informant was not present at the spot at the time of alleged incident. The recovery has been made at the instance of another accused and not with the present accused. The investigation is complete and charge-sheet is filed. As regards the other alleged injured persons are concerned, it appears that they have not received visible injuries or the injury is simple. This Court released accused Asha and Usha by order dated 07.10.2021, who were similarly placed to the present applicant and, therefore, the applicant deserves to be released on bail.

4. Learned APP strongly opposed the application and submitted that the present applicant has taken active part and used bamboo stick for assaulting deceased as well as other injured persons. The injury caused to the deceased proved to be fatal and the postmortem report would

show that the death was due to injury to the vital part. If we consider the injury certificate of Santosh, then it can be seen that the injuries were to the vital part. His statement is sufficient enough to gather that the present applicant had taken active part. Possibility of tampering cannot be ruled out and, therefore, the applicant does not deserve to be released on bail.

5. It is to be noted that the informant Sarla, who is the wife of deceased, lodged the report on 11.07.2021 and the incident had occurred around 6.00 p.m. on 10.07.2021. It shows further that there was dispute in respect of partition of the properties between the parties. The quarrel started due to the abuses given by accused Usha and Asha and thereafter, the co-accused i.e. Sandip, present applicant, came with weapons. Sandip was holding axe and the other three i.e. Yogesh, Usha and Asha were holding bamboo sticks. It is stated by the informant that all of them started assaulting Digambar and his two sons Balu and Sagar @ Santosh. When Sarla and her daughter-in-law Kavita tried to intervene, they were pushed and assaulted by Usha and Asha. It is then stated that the present applicant had assaulted Digambar as well as Santosh with bamboo stick. It is not stated where the blow given by the present applicant hits deceased Digambar, but then as regards Santosh is concerned, it is stated the blow was given on his forehead and head.

But, at the same time, it is to be noted that as per the contents of the FIR itself, Usha and Asha who have been holding bamboo sticks had also allegedly assaulted Santosh on his forehead and head. Accused Sandip is stated to have assaulted Digambar with axe, which hit his head. His provisional cause of death is head injury and the axe has been recovered from Sandip. From the medical certificate, which is on record and also the discharge certificate, it appears that Santosh was not admitted in the hospital, but he was discharged on the same day. What has been stated is that he had suffered blunt trauma to head and it appears that he had fracture to the nasal bone. Both these injuries are stated to be grievous. At present, the medical certificate *per se*, does not say that those injuries though on the vital part would have caused death. Further, when three persons are stated to have assaulted Santosh with bamboo sticks, then by whose blow a particular injury was caused could be difficult to conclude. That would definitely depend upon the entire evidence. The fact remains that two of the similarly situated accused persons have been released by this Court on bail on 07.10.2021 and, therefore, the applicant deserves to be released on bail. Hence, the following order :-

ORDER

- I) Application stands allowed and disposed of.

II) Applicant – Yogesh s/o Sheshrao Sakhale, who has been arrested in connection with Crime No.145 of 2021 registered with Ajintha Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 307, 504, 506, 34 of Indian Penal Code, be released on P R. Bond of Rs.25,000/- with one surety in the like amount.

III) The applicant shall not commit similar offence or indulge in any criminal activity.

IV) The applicant shall not reside or visit village Liha, Tq. Sillod, Dist. Aurangabad till the conclusion of the trial.

V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm