

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 815 OF 2020

1. Bhimrao @ Vikas Sukhdev Daragude.
2. Sukhdev Ramchandra Dargude. Applicants

Versus

The State of Maharashtra Respondent

Mr. Rushikesh Kale i/b. V. V. Purwant for Applicant.
Mrs. J. S. Lohokare, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th MARCH, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No. 399 of 2019 registered at Tembhurni police station, Solapur Rural, on 27/06/2019, under sections 143, 147, 148, 149, 302, 307, 324, 504 and 506 of the Indian Penal Code (for short 'IPC'). The applicants were arrested on 28/06/2019 and since then they are in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Rushikesh Kale, learned counsel for the

applicants and Smt. Lohokare, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by Sarita Dargude in respect of the incidents dated 27/06/2019, wherein, her husband Rajendra and brother in law Sanjay were assaulted at two different places. Rajendra had succumbed to his injuries and, therefore, the offence under section 302 of IPC was added. She has stated in her F.I.R. that the informant's family and applicants' family have adjacent ancestral agricultural lands. There was a dispute about the boundaries. She has alleged that the applicants and their families used to cause harassment by breaking the boundary lines, by disconnecting the electricity, breaking the pipes etc. On 23/06/2019, there was an incident when the applicant had broken a small boundary wall between the lands. At that time, the informant's brother in law tried to make his grievance before the villagers, but he was ignored. The informant's husband was working in Mumbai. He returned to their village on 24/06/2019. On 25/06/2019, Rajendra and Sanjay questioned the applicant's family and there was some quarrel. Both of them were arrested for beating the

applicant's family. They were released on bail.

On 27/06/2019, in two separate incidents at two separate places, Rajendra and Sanjay were assaulted by the applicants' group. The F.I.R. mentions the incident where Rajendra was assaulted. This incident was witnessed by the first informant. She has stated that, at about 9:30a.m. Pandurang, Laxman, Vijay and present applicants came to the informant's house. They were carrying weapons. It is alleged that the applicant Bhimrao was carrying heavy wooden stick and the applicant Sukhdev was carrying an iron rod. Co-accused Pandurang hurled a stone at Rajendra, because of that, Rajendra fall down. Pandurang gave a blow with a sword on his chin and others started assaulting with rods and wooden sticks. Accused Laxman gave blows with sickle. Rajendra had fallen unconscious. He was taken to dispensary and then to Jagdale hospital at Barshi. In the meantime, the informant was told that even Sanjay was beaten in a dairy and he was also taken to Barshi for treatment. It is mentioned in the F.I.R. that, at around 4:45p.m. Rajendra succumbed to his injuries. On this basis, the F.I.R. was lodged.

4. As far as, incident of assault on Sanjay is concerned, the applicant Sukhdev's name is not mentioned and applicant Bhimrao is given role of being present there. At that time, the co-accused Vikas was having a wooden stick. It is alleged that accused Pandurang and Vikas had dragged Sanjay outside the Dairy and then he was assaulted.

5. Learned counsel for the applicant submitted that, looking at the injuries mentioned in the postmortem notes as well as in the injury certificate of Sanjay, it cannot be said that this is an offence punishable under Section 302 of IPC. There was neither intention nor knowledge that Rajendra would succumb to the assault. The injury caused to Sanjay was a minor injury. He submitted that the informant has given exaggerated version and if the version was true, the assault would have caused many more serious injuries to both Rajendra and Sanjay. He submitted that the allegations against the Applicants are doubtful and hence they should be granted bail.

6. Learned APP opposed this application. She submitted that there are eye witnesses to the incident and, therefore,

occurrence of the incident cannot be doubted.

REASONS:

7. With the assistance of all learned Counsel for the parties I have perused the charge-sheet. There are eye witnesses, namely, Priyanka Dargude, Haridas Dargude and Rukmini Dargude, who had seen the assault on the deceased Rajendra. Their versions are similar to the first informant as mentioned in the FIR.

8. There is another group of witnesses who have seen the assault on injured Sanjay, they are, Vijay Jadhav and Birudev Dargude. As mentioned earlier these witnesses have not named Sukhdeo as one of the persons who was present at the time of assault on Sanjay. The only general allegations are made against the applicant Bhimrao of assault and there are allegations that Sanjay was dragged outside the dairy by him.

9. Thus, both the incidents have taken place one after the other at different places. The question is whether the Applicants intended to commit murder of either Rajendra or Sanjay. In this context, the injuries suffered by both of them assume importance.

The injury certificate of Sanjay shows that he had suffered one CLW on occipital region of dimensions 4 cm x 1 cm x 1 cm and it was described as a simple injury. There is no other injury on his person. This means that the version of Vijay Jadhav and Birudev Dargude is exaggerated. If Sanjay was assaulted by sticks by three persons, there should have been more injuries. The only injury caused to him is also described as a simple injury. Therefore, obviously the Applicants neither caused any grievous injury nor they intended to cause any grievous injury though they had weapons and opportunity for the same.

10. The deceased Rajendra's injuries are noted in the postmortem notes. There are four injuries mentioned in column No.17. They are as under :

- (i) CLW below chin;
- (ii) Blunt trauma to right arm;
- (iii) CLW below left knee of size 0.5 cm x 1 cm.; and
- (iv) Blunt trauma to left knee joint and also to right knee joint.

11. The cause of death of Rajendra was mentioned as "death due to injury to vital organ brain i.e. head injury". Importantly, no external injury was noted on the head. The eye

witnesses' statements in respect of injuries to Rajendra mention that accused Pandurang had given blow with sword on his chin, accused Laxman had given a blow of sickle on his arm and others had assaulted him with iron rod and sticks. Before that, accused Pandurang had thrown a stone at Rajendra. Because of which he had fallen down but no such injury was seen on his head. Therefore, at this stage, there is substance in the arguments of learned counsel for the applicants that brain-hemorrhage was perhaps caused due to heavy fall on the ground. Of course, this submission will have to be decided during trial. But, at this stage, the applicants have sufficiently made out a case to believe that they did not intend to cause injury to Rajendra resulting in his death or that they have not shared any common object of an unlawful assembly for causing grievous injury to Rajendra. Similarly, Sanjay's injury is also simple. Therefore, in this background and in the facts of this case, the offence may not fall within the definition of murder, but it could be a much lesser offence. Therefore, I am inclined to grant bail to the present applicants. However, considering the past enmity between the

parties, some conditions are imposed on the applicants. All the observations made in this order are restricted to passing of this order and the trial court shall not be influenced by any of these observations while deciding trial.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 399 of 2019 registered at Tembhurni police station, Solapur Rural, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) The Applicants shall attend the concerned police station every fortnight for a period of one year from today.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)