

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

[1] CRIMINAL BAIL APPLICATION NO.877 OF 2020

Vinod Ashok Kamble Applicant
Versus
The State of Maharashtra Respondent

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WITH

[2] CRIMINAL BAIL APPLICATION NO.1015 OF 2020

Tejas Anil Kamble Applicant
Versus
The State of Maharashtra Respondent

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WITH

[3] CRIMINAL BAIL APPLICATION NO.1016 OF 2020

Sandeep @ Kalu Suryakant Kamble Applicant
Versus
The State of Maharashtra Respondent

Mr. Satyavrat Joshi, Advocate for the Applicants in all Bail Applications.

Smt. A.A. Takalkar, APP, for the Respondent-State in BA/877/2020 & BA/1016/2020.

Mr. S.H. Yadav, APP for the Respondent-State in BA/1016/2020.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th JANUARY, 2021
[Through Video Conference]

P.C. :

1. In all these Applications, this common order is passed because they arise out of the same offence and same investigation. For convenience, the Applicants are referred to by their names.

2. The Applicants are seeking their release on bail in connection with C.R.No.134/2019 registered at Kasegaon Police Station, District – Sangli on 20.6.2019 under Sections 302, 307, 325, 323, 109, 143, 147 & 149 of the Indian Penal Code. Initially the offence was registered under Section 323 of IPC, but, after the death of the deceased, Section 302 of IPC was added.

3. Heard Shri Satyavrat Joshi, learned Counsel for the Applicants in all Bail Applications, Smt. A.A. Takalkar, learned APP for the State in Bail Applications No.877/2020 & 1016/2020 and Shri S.H. Yadav, learned APP for the

State in Bail Application No.1016/2020.

4. The prosecution case is in respect of death of one Sachin Rasate. The FIR is lodged on the basis of the statement given by the deceased himself. His statement was recorded in Krishna Hospital, Karad. He has stated in that statement, which turns out to be a dying declaration, that on 18.6.2019 at about 9:00 a.m. he was sitting near the Samaj Mandir. The Applicants along with Rohan Kamble and Ganesh Mane came there. They were angry because the deceased was hurling abuses under the influence of liquor. All these persons assaulted him with fist and kick blows on his stomach and right eye. He gave a complaint against those persons and named all these accused in his statement. Based on his statement, the FIR was registered under Section 323 and other Sections of IPC.

5. The informant was removed to hospital and he died on 20.6.2019. Thereafter Section 302 of IPC was added. In the meantime on 20.6.2019, all the Applicants were already arrested. They are in custody since then. The

investigation is over and the charge-sheet is filed.

Submissions :

6. Shri Satyavrat Joshi, learned Counsel for the Applicants submitted that it is not a case of murder. There was no premeditation. No weapon was used. The postmortem notes show that there was only one grievous injury to the intestine for which the informant was operated. The death was due to septicemia and not because of any injury caused by the Applicants.

7. He submitted that there are statements of relatives of the informant, who have seen the incident, who in fact have stated that the Applicant Vinod had tried to pacify the quarrel and, therefore, he could not be one of the assailants.

8. He submitted that these statements also show that the incident had taken place in parts. At the later part, one Sangram Kamble gave a kick blow with considerable force on the stomach of the informant. He submitted that

this could be the real cause of injury to the intestine. All other injuries were in the nature of abrasions on hands and knees. And, therefore, no offence punishable under Section 302 of IPC is made out.

9. Both learned A.P.P. opposed these applications. They relied mainly on the statements of some of the eye witnesses and the statement of the informant himself wherein all the Applicants were clearly named for the assault. They relied on the statements recorded under Section 164 of Cr.P.C. of Abhijit Rasate – brother of the deceased and Abhijit's wife Smita Rasate. In these statements, these witnesses have not stated that the Applicant Vinod has tried to pacify the quarrel or that Sangram had assaulted at a subsequent point of time. In these statements, similar role of assault on the deceased is given to the Applicants, including assault on his stomach. For all these reasons, they submitted that no case is made out for grant of bail to the Applicants.

Reasons :

10. With the assistance of learned Counsel for the parties, I have perused the charge-sheet. The postmortem notes show that there was one surgical incised wound of laprotomy over anterior abdomen with 16 stitches. The second injury was intraabdominal drain tube around in that region. The injuries No.3 to 9 were in the nature of abrasions either on elbow, fingers, knees or ankle. The cause of death was mentioned as “death due to septicemia in a operated case of ileal perforation”. Thus, it is clear that the death was caused because of septicemia post operation. Of course, the informant had to be operated because of the injuries suffered during the incident. However, there appears to be only one major blow on the intestine. The rest of the injuries are in the nature of abrasions which could be attributed to the assault by all the accused. Therefore, the impact on the stomach assumes more importance.

11. In this context, the statements of some of the

relatives of the deceased are important.

12. Sonabai Rasate – mother of the deceased Sachin has stated that at the time of incident all the Applicants and others were assaulting the deceased with kicks and fist blows. The statement interestingly further goes on to mention that the Applicant Vinod and others were telling others not to assault the deceased Sachin. While she and others were taking the deceased Sachin towards his house, the accused Sangram Kamble kicked Sachin in his stomach and then Sachin was brought home. After that he was taken to local hospital. Similar is the statement of Roshneeta Rasate – sister of the deceased. These statements were recorded on 20.6.2019.

13. Learned A.PPs. Smt Takalkar and Shri Yadav submitted that there appears to be a mistake in the recording of the statements that Vinod had tried to pacify the quarrel. In fact, the narration in the first information report and in the first part of the statement of these witnesses show that even the Applicant Vinod had also

assaulted the deceased. However, it is important to note that the investigating agency has not taken care to record supplementary statements of these witnesses clarifying this issue. Therefore, in the charge-sheet these statements remain mentioning that the Applicant Vinod had tried to pacify the quarrel.

14. Of course, Smita Rasate's statement recorded under Section 164 of Cr.P.C., does not give any such concession to the Applicant – Vinod, but, it was recorded in September, 2019.

15. There are statements of other witnesses, namely, Poojan Bhandare, Sagar Kamble, Sonu Mane, Jayant Mane and Sushil Mane, who have consistently stated that when Sachin was taken towards his house, Sangram kicked him in his stomach.

16. Even Abhijeet Rasate has stated in his statement dated 6.7.2019 that Sangram Kamble had kicked the deceased Sachin in his stomach. Thus, at this stage, there is

sufficient material to indicate that the major injury, which has ultimately led to death of the deceased, was caused by the accused Sangram Kamble. This injury was caused when Sachin was being taken towards his house by his relatives. This is the second part of the incident. The Applicants' roles had ended in the first part of the incident.

17. The postmortem notes show that the Applicants have caused injury on non-vital part of the deceased. The only major injury is attributed by all these eye witnesses to Sangram Kamble specifically. Though the first informant has not named Sangram Kamble in his dying declaration and has generally named other accused including the present Applicants, the prosecution case itself is that the victim was hurling abuses while he was under influence of liquor. Therefore, in this particular case, the statements of eye witnesses are more important. From the narration given by these eye witnesses, it is amply clear that there was no premeditation, no preparation and no weapon attributable to any of the Applicants. The Applicants are in

custody since 20.6.2019. There is considerable force in the submission of Shri Joshi that it may not be a case of offence punishable under Section 302 of IPC, but, could be a case of much lesser offence. This submission will, of course, have to be tested during trial. At this stage, the Applicants have sufficiently made out a case for their release on bail.

18. Hence, the following order :

ORDER

- (i) In connection with C.R.No.134/2019 registered with Kasegaon Police Station, District – Sangli, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) Criminal Bail Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)