

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

CRIMINAL BAIL APPLICATION NO.1942 OF 2021

1. Somnath Bharat Ambawale,
2. Chetana Sandip Pawar, &
3. Sushma Rahul Pawar. Applicants
Versus
The State of Maharashtra Respondent

Mr. A.P. Mundargi, Senior Advocate a/w. Meghdeep Oak,
Varun Thokal, for the Applicants.
Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th JUNE, 2021
[Through Video Conferencing]

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.643/2020 registered at Satara Taluka police station, under Section 302 read with 34 of the Indian Penal Code. Applicant No.1 was arrested on 31.12.2020 and other two applicants were arrested on 1.1.2021. Since then they are in custody. The investigation is over and the charge-sheet is filed.

2. Applicant No.2 is widow of the deceased Sandip

Pawar. Applicant No.1 is her brother and applicant No.3 is wife of brother of the deceased.

3. Heard Shri A.P. Mundargi, learned Senior Counsel for the Applicants and Smt. J.S. Lohokare, learned APP for the State.

4. The prosecution case is that the deceased Sandip Pawar was addicted to liquor. He had illicit relations with a woman at Kolav. Therefore, he used to pick up frequent quarrels with applicant No.2, his brother and his mother. On 27.12.2020, he was harassing applicant No.2 after consuming liquor. Applicant No.2 called applicant No.1 from Saudapur. When he questioned the deceased, there was quarrel. The deceased held applicant No.2 by her throat. That time, applicant No.1 intervened and beat the deceased. Applicants No.2 & 3 gave blows with wooden pieces on the deceased. The deceased felt uncomfortable in the night. Therefore he was taken to Command Hospital, Pune. But there he was declared dead.

5. The FIR was lodged by applicant No.2 herself on 29.12.2020, wherein she had given a different version, which according to the prosecution case is false. In her FIR, she has stated that on 27.12.2020, the deceased Sandip had come to their house under influence of liquor. He abused his mother and, therefore, his mother had given a complaint to Satara police station. In the evening, again the deceased came home under influence of liquor. At that time, he had suffered injuries to his hands and legs. Applicant No.2 asked him about the cause but he was unable to give any information. Thereafter he was taken to Command Hospital but he was declared dead. On this version, the FIR was lodged. The investigation was carried out and it transpired during investigation that applicants No.2 & 3 had assaulted the deceased with wooden pieces and applicant No.1 had also taken part in the assault. On these allegations, all the applicants were arrested as mentioned earlier.

6. Shri Mundargi, learned Senior Counsel submitted that the final opinion as to cause of death is still not available.

The narration in the charge-sheet itself shows that the deceased was constantly harassing applicant No.2 and his other family members. On the fateful date, even his mother was abused by him for which a separate complaint was lodged. In the evening, applicant No.2 had called applicant No.1 for her help. At that time the deceased had almost tried to throttle her and, therefore, applicant No.1 had intervened and had beaten him with hands. In the meantime, applicants No.2 & 3 getting enraged gave blows with wooden pieces kept in the house as fuel. He submitted that applicant No.2 herself took the deceased to hospital and, therefore, there was no intention on their part to commit murder of the deceased. He submitted that there are statements of neighbouring witnesses where they have only spoken about the assault. The genesis of the incident is reflected in the statements of mother of the deceased and Rahul Pawar who is brother of the deceased.

7. Learned A.P.P. opposed this application. She submitted that there are eye witnesses to the incident and looking at the nature of the injuries, the offence punishable

under Section 302 of IPC is made out.

8. I have considered these submissions. The post-mortem notes show that the deceased had suffered as many as 21 injuries which were in the nature of bruises, abrasions, laceration and incised wound. Therefore, there is no doubt that he was assaulted and though the cause of death is not given; apparently he had died because of this assault. The question is whether the applicants had requisite intention falling within the definition of murder. Though this question will have to be finally decided during the trial, at this stage, there are indications that their intention was not to commit his murder, which is reflected from various statements of eye witnesses.

9. As far as independent eye witnesses are concerned, there are statements of neighbours Dattatraya Pawar, Arun Pawar, Sujit Pawar, Dattatraya Jadhav and Vinod Pawar. All of them have stated that at about 8:00 p.m. on 27.12.2020, quarrel was going on in the house of the deceased. He was being assaulted by applicants No.2 & 3 with

wooden sticks and applicant No.1 was beating him with his hands. The important statement would be that of mother of the deceased, who had seen the incident right from the inception. She has stated that in the morning the deceased had assaulted this witness i.e. his own mother for which a complaint was made to the police station. In the evening the deceased had returned home under influence of liquor. He started abusing and assaulting applicant No.2. Applicant No.3 tried to intervene. At that time, applicant No.1 also came to their house. He started beating the deceased. Thereafter applicants No.2 & 3 started giving blows with wooden pieces which were in the house. This statement is important which shows genesis of the incident. Significantly this statement specifically mentions that the deceased had started beating applicant No.2 and he had held her by throat.

. The sequence does indicate that applicant No.2 and others could be under the real apprehension of serious injuries to applicant No.2. In that case, applicant No.1 has significantly given beating only with his hands. It is the two

ladies i.e. applicants No.2 & 3 who have beaten the deceased with wooden sticks.

10. In his statement, Rahul Pawar brother of the deceased, has stated that after the quarrel between the deceased and applicants, the deceased was sleeping in the hall. But in the night he felt breathless. Therefore the family members got scared. Applicant No.2 suggested that he should be removed to Command Hospital because his treatment was going on there. Thereafter they arranged for a car and the deceased was immediately taken to Command Hospital. This shows that the applicants have not beaten the deceased to death. He was sleeping after the assault, but, in the night his condition deteriorated and seeing this the applicants immediately arranged to remove him to the hospital. In fact applicant no.2 suggested that he should be taken to Command Hospital where his treatment was already going on. This shows that the applicants may not have entertained intention to commit murder of the deceased. There was no premeditation or preparation to commit the assault. In this

background, lenient view can be taken only for consideration of bail. Applicant No.1 is not attributed any role with any weapon. Other two applicants are ladies and the assault has taken place in the background mentioned hereinabove.

11. In this view of the matter, bail can be granted to all the applicants. Therefore, their detention in custody for the entire period of trial is not necessary. Hence the following order :

ORDER

- (i) In connection with C.R.No.643/2020 registered at Satara Taluka police station, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties each in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)