

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

CRIMINAL BAIL APPLICATION NO. 85 OF 2021

1. Shivaji Suresh Ghadi.
2. Sunil Laxman Rawool.
3. Ketan Pramod Aglawe.
4. Amresh Kashinath Kavitar.
5. Akshay Atmaram Ghadi.
6. Sandip Khema Toraskar.
7. Namdeo Ashok Sood.
8. Dipak Gunaji Warang.
9. Pradip Gunaji Warang.
10. Krishna @ Bandya Gunaji Warang.
11. Onkar Pramod Palav.

.... Applicants

Versus

The State of Maharashtra

.... Respondent

Mr. A. S. Khandeparkar, Sr. Advocate a/w. Apoorva A.
Khandeparkar, a/w. Rajdeep D. Gude, a/w. Rohit Mahadik, a/w.
Shubham Jawlekar i/b. Khandeparkar & Associates for Applicants.
Smt. A. A. Takalkar, APP for State/Respondent.
Mr. S. L. Dhobale, PSI & Mr. H. C. Dhotre, HC 352, Kudal Police
Station, Sindhudurg present.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th FEBRUARY, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No. 240 of 2020 registered with Kudal police

station, Sindhudurg, under sections 304, 201 and 177 r/w. 34 of the Indian Penal Code (for short 'IPC') and under section 3, 25(1) (b) of the Indian Arms Act.

2. Heard Shri. Khandeparkar, learned senior counsel for the applicants and Smt. Takalkar, learned APP for the State.

3. This is an unfortunate incident, though, the offenders cannot be said to be totally innocent. However, the matter relates to death of one Yuvraj. At least concerning his death, the incident appears to be accidental.

4. The First Information Report (for short 'F.I.R.') is lodged by PSI Sandip Dhoble. He has stated that, on 26/11/2020 he received an information in respect of accidental death of one Yuvraj. The deceased had gone for hunting on 26/11/2020 in the morning. At around 3.15p.m. the person who had given the information to the police, heard barking of dogs. That person went to the spot. He saw that Yuvraj was lying in injured condition. Yuvraj was saying that he had suffered injuries on the chest. There

was a hole near left side of the chest. A gun was lying nearby. Yuvraj's uncle took him towards his house. That time, parents and other family members of Yuvraj were in the house. Ambulance was called, he was taken to Mangaon Government Hospital, then he was taken to Kudal. At around 6:00p.m. Yuvraj succumbed to his injuries. Police carried out the investigation. Initially they did not get co-operation from the villagers, however, subsequently they got some clue. The police made inquiries with many persons. One Laxman told the police that the applicant Ketan and Onkar had gone to Mangaon in ambulance. Ketan had suffered injuries. At that time, this witness was told that, all the applicants had gone for hunting on 26/11/2020 and when applicant Onkar fired from his gun, the pellets accidentally caused injuries to Ketan and to deceased Yuvraj. Unfortunately, Yuvraj's chest was penetrated by a pellet and that caused his death. On this basis the F.I.R. was lodged.

5. Shri. Khandeparkar submitted that, this is an unfortunate case of accident caused due to misfiring of a gun and

there can never be an intention or knowledge attributable to any of the applicants. At the highest, it can be the case of negligence or perhaps it can be an offence under the Wild Life Protection Act, but certainly not under section 304 of IPC. He submitted that the applicant No.8 is the father of deceased Yuvraj. Applicant Nos.9 and 10 are Yuvraj's uncles. Others are friends of Yuvraj. He submitted that, they are in custody since 05/12/2020 and their further custody for investigation purposes is not necessary.

6. Learned APP relied on the investigation carried out so far which is more or less reflected in the F.I.R. She submitted that, in any case, the applicants had no business to go for hunting.

7. I have considered these submissions. From the F.I.R. itself it is more than clear that it is a case of accident. The gun used by applicant Onkar misfired causing penetration of pellet in the chest of deceased Yuvraj. Even, the applicant Ketan was injured. The others were not really concerned with this actual firing of the gun, however, their participation in the incident of

illegal hunting, at the most, can be established.

8. Considering the facts in this case, at this stage, the application of Onkar cannot be granted as the investigation is still in progress and fatal injury was caused because of his gun. Therefore, application of the applicant No.11 Onkar is rejected, at this stage. He has liberty to approach the trial court for his release on bail after filing of the charge-sheet.

9. So far as other applicants are concerned, it appears that they are not really concerned in respect of the accidental firing of the gun causing injuries to the deceased. As mentioned earlier, the applicant No.8 is unfortunate father of the deceased and applicant Nos.9 and 10 are his uncles. The others have not played any role in the incident except accompanying each other in going on illegal hunting expedition. Therefore, in any case, the offence under section 304 of IPC cannot be attributed to them and they cannot be said to have intention or knowledge that such incident could have taken place. Though, allegations point out that

the provision of Wild Life Protection Act can be applied in this case along with provisions of Indian Arms Act. But for that purpose further custody of the applicant Nos.1 to 10 is not necessary. They can be granted an order of bail in their favour.

10. Hence, the following order :

ORDER

- (i) Application in respect of the applicant No.11 Onkar is rejected. Liberty is granted to him to approach the trial court for his release on bail after filing of the charge-sheet.
- (ii) In connection with C.R.No. 240 of 2020 registered with Kudal police station, Sindhudurg, the applicant Nos.1 to 10 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.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)