

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

CRIMINAL BAIL APPLICATION NO.200 OF 2021

1. Bapaji Dhakal Khanjode, &
2. Santosh Bapaji Khanjode Applicants
Versus
The State of Maharashtra Respondent

Smt. Vrishali R. Raje, Advocate for the Applicants.
Smt. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th MARCH, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.81/2020 registered at Vikramgad police station, District-Palghar dated 1.7.2020 under Sections 302, 504, 506 read with 34 of the Indian Penal Code.

2. The prosecution case is that the Applicants are father and son. Applicant No.1's daughter, i.e. Applicant No.2's sister, was married to one Prakash Nakhare. Prakash Nakhare was having illicit relations with one Sakku Baraf. The Applicants, therefore, were angry with Sakku and they

assaulted her on 30.6.2020 in the morning. Applicant No.1 assaulted her with a iron crowbar and Applicant No.2 pushed her violently against a pole thereby causing her death. On this basis, the Applicants were arrested on 1.7.2020 and since then they are in custody. The investigation is over and the charge-sheet is filed.

3. Heard Smt. Vrishali R. Raje, learned Counsel for the Applicants and Smt. A.A. Takalkar, learned APP for the State.

4. The FIR is lodged by son of the deceased, who had seen the incident. He has stated that on 28.6.2020, there was a quarrel between the deceased and Phulwanti i.e. Prakash's wife. The villagers were to look into the matter to find a solution. However, the Applicants did not cooperate and nothing further happened. On 30.6.2020, at about 7:00 a.m., the deceased was coming back to her house. She was stopped by the Applicants. She was abused. Applicant No.1 gave blows with iron scrowbar and Applicant No.2 threw her on the ground. The others came for help and the Applicants

went away. The injured Sakku was removed to Primary Health Center but while undergoing treatment she succumbed to her injuries. On this basis, the FIR was lodged.

5. Learned Counsel for the Applicants submitted that the narration given by the eye witnesses show that the incident could not have taken place in the manner in which they have narrated it. The postmortem notes do not support their story. She submitted that if a person is assaulted on head with the heavy iron crowbar, then there would be at least a skull fracture. There is no such injury noticed on the dead body. She submitted that the eye witnesses had actually not seen the incident. The Applicants are arrested only because of the previous dispute between Phulwanti and the deceased.

6. Learned Counsel for the Applicant submitted that Applicant No.1 is more than 60 years of age and, therefore, leniency should be shown to him.

7. Learned A.P.P. opposed this application. Learned

A.P.P. relied on the statements of the eye witnesses i.e. the first informant as well as his sister Neelam Baraf. She submitted that a deadly weapon was used and the deceased was brutally assaulted. Therefore, the Applicants do not deserve any leniency.

8. I have considered these submissions and with their assistance I have perused the charge-sheet. Besides these two eye witnesses, there are others who have described this incident. They are Baban Baraf and Dilip Khanjode. They have stated about the incident. They had seen the incident. Baban had stated that he had seen Applicant No.1 assaulting her with hands on her head and neck; whereas Dilip has stated that both the Applicants were assaulting her. Significantly, both of them have not stated that either of the Applicants was carrying a iron crowbar. Therefore, except for reference to the weapon, these eye witnesses have supported the theory of assault mounted by the present Applicants on the deceased.

9. The postmortem notes show that the deceased had

suffered head injury in the nature of contusion and abrasions at right parietal region of the size 2.5 cm x 1 cm x 0.5 cm; and at left knee joint of the size 2 cm x 2 cm and 1 cm x 1 cm. There was underscalp haematoma over right frontal, right temporal and right parietal region. There was subdural haematoma over right parietal, temporal and right frontal region. Therefore, the head injury was quite serious. The cause of death mentioned was “death due to cardio-respiratory arrest due to intracranial bleed, due to head injury”.

10. Considering the statements of eye witnesses and the injuries suffered by the deceased, it is apparent that the Applicants are responsible for causing these injuries which were endangering the life of the deceased. Use of iron crowbar is not supported by other eye witnesses. However, at this stage, their consistent case is in respect of assault committed by both the Applicants on the deceased causing head injury. The injury is serious.

11. There is motive for the Applicants for commission

of this offence. It has not occurred at the spur of moment.

12. At this stage, there is nothing to show that the offence may fall in any of the exceptions given under Section 299 of IPC making it an offence of culpable homicide not amounting to murder. However, this will have to be decided during trial.

13. The observations made in this order are restricted to passing of the present order. Learned trial Judge shall decide the trial on the basis of evidence led before him, without being influenced by the observations made in this order.

14. In this view of the matter, I am not inclined to grant bail to the Applicant. Hence, the Application is rejected.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date: 2021.03.20
14:30:26
+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)