

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

CRIMINAL BAIL APPLICATION NO.495 OF 2020

1. Pandurang Sukhdev Dargude, &
2. Laxman @ Pappan Sukhdev Dargude Applicants
Versus
The State of Maharashtra Respondent

**WITH
INTERIM APPLICATION NO.1407 OF 2020
IN
CRIMINAL BAIL APPLICATION NO.495 OF 2020**

Sarita Rajendra DargudeIntervenor
IN THE MATTER BETWEEN
Pandurang Sukhdev Dargude
& Anr. Applicants
Versus
The State of Maharashtra Respondent

Mr. Viresh V. Purwant, Advocate for the Applicants.
Mr. Ajay Patil, APP for the Respondent-State.
Ms. Vilasini Balasubramanian, Advocate a/w. Jaydeep Mane,
for the Intervenor in IA/1407/2020.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.399/2019 registered at Tembhurni police station, Solapur Rural on 27.6.2019 under Sections 143, 147, 148, 149, 302, 307, 324, 504 & 506 of the Indian Penal Code. The Applicants were arrested on 28.6.2019 and since then they are in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri Viresh Purwant, learned counsel for the Applicants, Shri Ajay Patil, learned APP for the State and Ms. Vilasini Balasubramanian, learned Counsel for the intervenor.

3. The FIR is lodged by Sarita Dargude in respect of the incidents dated 27.6.2019 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 FIR that the informant's family and the

Applicants' family have adjoining ancestral agricultural lands. There was a dispute about the boundaries. She has alleged that the Applicants and their family used to cause harassment by breaking the boundary lines, by disconnecting the electricity, breaking the pipes etc. On 23.6.2019, there was an incident when the Applicants' father had broken a small boundary wall between the lands. The informant's brother-in-law tried to put forth his grievance in the village, but, he was ignored. The informant's husband was working in Mumbai. He returned to their village on 24.6.2019. On 25.6.2019, Rajendra and Sanjay questioned the Applicants' family. There was some quarrel. Rajendra and Sanjay were arrested for beating them; and thereafter they came out after being released on bail. On 27.6.2019, in two separate incidents at two separate places, Rajendra and Sanjay were assaulted by the Applicants. The FIR mentions the incident where Rajendra was assaulted. This incident was witnessed by the first informant. She has stated that at about 9:30 a.m., both the Applicants, brother Vijay, father Sukhdev and others came

to the informant's house. The Applicant-Pandurang was carrying a sword. Sukhdev was having a iron rod, Vikas was having heavy wooden stick, the Applicant-Laxman @ Pappan was having sickle and others were having sticks. The Applicant-Pandurang hurled a stone at Rajendra. Because of that, Rajendra fell down. It is alleged that as Rajendra fell down, the Applicant-Pandurang gave a blow with a sword on his chin and others started assaulting him with iron rods and wooden sticks. The Applicant-Laxman gave a blow with sickle on his arm. The informant and other family members tried to protect Rajendra from assault, but, even they were given blows and after that the assailants left the spot by abusing the informant. 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 FIR that at around 4:45 p.m. Rajendra succumbed to his injuries. On this basis, the FIR was lodged.

Submissions :

4. Shri Purwant 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 of 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 on both Rajendra and Sanjay. He submitted that the allegations against the Applicants are doubtful and hence they should be granted bail.

5. Learned A.P.P. as well as learned Counsel for the intervenor opposed this application. They submitted that there are eye witnesses to the incidents. Therefore, occurrence of the incidents cannot be doubted. They submitted that in addition to the direct evidence of eye witnesses, there is a circumstance of recovery of weapons at

the instance of the Applicant Pandurang, which needs to be taken into consideration. On this material, they opposed this application.

Reasons :

6. 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.

7. There is another group of witnesses who have seen the assault on the injured Sanjay, they are, Vijay Jadhav and Birudev Dargude. These eye witnesses have stated that Sanjay was assaulted by the Applicant-Pandurang with a heavy wooden stick on back side of his head at around 9:00 a.m. in Prabhat Milk Dairy. Even after Sanjay had fallen down on the ground, the Applicant-Pandurang gave few more blows on Sanjay. Pandurang was accompanied by his brother Vikas

and Applicant No.2. They were carrying wooden sticks. All of them assaulted Sanjay. The others, including, Vijay Jadhav and Birudev Dargude protected Sanjay. Then the Applicant No.1-Pandurang, Applicant No.2-Laxman and Vikas left the spot. Sanjay was taken to hospital.

8. 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.

9. 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.

10. 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 the injuries to Rajendra mention that the Applicant-Pandurang had given blow with sword on his chin, the Applicant-Laxman had given a blow with sickle on his arm and others had assaulted him with iron rod and sticks. Before that the Applicant-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 Shri Purwant

that the brain-hemorrhage was perhaps caused due to heavy fall on the ground. Of course, this submission will have to be ultimately tested during trial. But, at this stage, the Applicants have sufficiently made out a case to believe that they did not intend to cause any injury resulting in death of Rajendra. Similarly Sanjay's injury is also simple.

11. Allegedly Applicant No.1 was carrying a sword and yet there is no grievous injury caused by sword on any other vital part of the body. In this view of the matter, at this stage, there is a scope to believe that 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 the observations while deciding the trial.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No.399/2019 registered with 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 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) The Application stands disposed of accordingly.
- (iv) In view of disposal of Bail Application, nothing survives in Interim Application No.1407/2020. Same also stands disposed of.

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
2021.02.25
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+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)