

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

CRIMINAL BAIL APPLICATION NO. 186 OF 2021

1. Vinod Chundaman Magre,

2. Deepak Baban Suradkar

...Applicants

vs.

The State of Maharashtra

...Respondent

Mr.Sumeet Gemnani i/b. Mr.Satyam Pille for Applicants.

Mr.A.P. Kapadnis, APP for the State.

Mr.Deepak Shinde, API, Central Police Station, Ulhasnagar No.3.

CORAM : BHARATI DANGRE, J.

DATED : 21 SEPTEMBER 2021

P.C. :

. The Applicants are charged for the offences punishable under Sections 302, 143, 147, 148, 149 of IPC and Sections 37(1) and 135 of MPA in C.R.No.189/2020 registered on 30 May 2020 with Central Police Station, Ulhasnagar. Both the Applicants are arrested on 30 May 2020. Total six accused have been chargesheeted on completion of investigation and the present Applicants are Accused No.1 and Accused No.6.

2 Learned Counsel for the Applicants advanced his submission to the effect that Accused No.5 Ravi Wagh, who has been arrested along with the present Applicants, is released on bail by order of this court on 5 August 2021 (Criminal Bail Application No.515/2021). Parity is sought with the said Applicant, in the wake of the observations made by this court while enlarging him on bail.

3 With the assistance of learned Counsel for the Applicants and learned APP, I have perused the chargesheet. The chargesheet allege that on 29 May 2020, when six accused persons, in order to revenge the earlier discord has caused death of Vedprakash Manoj Tiwari @ Golu by assaulting him by means of knife, sickle and caused injuries in his head. Hence, they are chargesheeted for the sections mentioned above.

4 The complainant is one Arvind Gawali, who has recorded his statement to that effect that at 11.00 p.m. on 29 May 2020 the six accused persons had chased Golu and Dablu towards railway track. They were armed with weapons in their hands. The incident which anteceded the chase is described as quarrel between Golu and Dablu, on one hand and Rakesh, on the other, in which it is alleged that Golu had slapped Rakesh and thereafter, the residents of the locality had chased Golu and Dablu and they ran towards the Vitthalwadi railway track. After crossing the other side of the railway track, they could notice Golu in an injured condition surrounded by stones smeared with blood.

5 The chargesheet compile various statements and this include the statement of Vicky Shinde, Ashish Gupta @ Dablu, who was accompanying Golu, one Nilesh Jagadishsingh Singh @ Sunny, Nehal Pavansingh Singh @ Amit. When the statements are carefully perused and in particular, the statement of Ashish Gupta @ Dablu, he corroborates that when Golu had slapped Rakesh, the residents of the locality had ran towards them and in order to avoid any attack, they ran towards railway track. Ashish has stated that after crossing the railway track, Golu informed him that he was proceeding towards Dombivili whereas the said witness proceeded towards Vitthalwadi railway station. Even the person, who was

accompanying Golu, has not spoken of any assault by present Applicants by means of the weapon though he refer to the residents of the locality chasing them.

6 The post mortem report of the deceased record multiple abrasions, CLW and incised wound along with stapled wound around the occipital and parietal region. There are in all 29 injuries mentioned in column no.17 along with 5 injuries referred to in column no.19 sub-clause (1). The cause of death is opined “Death due to head injury”. The post mortem report, therefore, lead to an inference that the deceased Golu was brutally assaulted. In order to implicate the present Applicants for the said assault, the prosecution should come up with evidence to establish that the assault is by them, but *prima facie* the chargesheet do not contain any material to that effect. Statement of witnesses recorded in the chargesheet only lead them till the railway track, what transpired after the crossing of the railway track is not brought on record by the Investigating machinery.

7 This is the precise reason why the co-accused Ravi Wagh came to be released on bail by the court, on which heavy reliance is placed by learned Counsel for the Applicants. In the said order, reference is also made to the 164 statement of the informant and one Vicky Bhaskar Shinde, where the informant has clearly omitted to mention that the accused persons had chased the deceased with weapons in their hand and therefore, it is recorded that the informant’s version is at variance and the benefit must go to the Applicants. There is no reason why the benefit of reasoning while enlarging co-accused Ravi Wagh, shall not be extended to the present Applicants in the wake of the similar material compiled against the accused persons in the chargesheet. The Applicants, therefore, deserve

enlargement on bail subject to the following stipulation :

: ORDER :

- (a) Application is allowed.
- (b) The Applicants - Vinod Chundaman Magre and Deepak Baban Suradkar shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.
- (c) The Applicants shall report to the concerned Police Station on first Thursday of every month between 2.00 pm to 5.00 p.m till the chargesheet is framed.
- (d) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

7. The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)

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