

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

CRIMINAL BAIL APPLICATION NO.1280 OF 2020

Sandeep Balu Chougule Applicant
Versus
The State of Maharashtra Respondent

Mr. Satyavrat P. Joshi, Advocate for the Applicant.
Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JANUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.100/2020 registered at Ispurli Police Station, District-Kolhapur dated 3.6.2020 under Sections 302, 307, 324, 504, 506 read with 34 of the Indian Penal Code. The Applicant was arrested on 4.6.2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Shri Satyavrat P. Joshi, learned Counsel for the applicant and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The FIR is lodged on 3.6.2020 by one Jaid Fakuiddin Mujawar. He has described about the dispute with the Applicant's family in respect of cultivation of an agricultural land in Gat No.321 in their village Nandgaon. The incident occurred on 3.6.2020 at 10:30 a.m.. The informant, his father Fakuiddin, his mother Tabassum and others went to that spot at that time. They saw that the Applicant, his brother Sagar Chougule and father Balu Chougule were sowing seeds. A quarrel ensued as the informant's father Fakuiddin questioned them. It is alleged that the Applicant and his group started abusing. The Applicant picked up a stick lying there at the spot. He gave a blow with it on the left leg of the informant. He gave a blow with the same stick on the head of the first informant's father Fakuiddin. The informant's father Fakuiddin fell down. The Applicant's brother Sagar Chougule gave another blow on Fakuiddin's head with a stick. Balu Chougule, i.e. Applicant's father, gave a blow on Fakuiddin's back. The others from the informant's group were

also assaulted. The injured Fakruddin was taken to the C.P.R. Hospital, Kolhapur. He was admitted there. He was unconscious, and at that time, this FIR was lodged. Subsequently, Fakruddin succumbed to his injuries on 4.6.2020 at 10:45 a.m.. Therefore, Section 302 of IPC was added. The Applicant and others were arrested. The investigation is carried out.

Submissions :

4. Learned Counsel for the Applicant submitted that the narration in the FIR shows that the informant's group was aggressor. They had entered into the field where the Applicant and his family were cultivating the land. He submitted that even as per the allegations there was only one blow attributed to the present Applicant.

5. Learned Counsel for the Applicant invited my attention to the medical certificate in respect of the injuries suffered by the Applicant's father Balu Chougule. The Primary Health Centre, Ispurli has given a certificate showing bruise

and contusion over scalp and it was described as a simple injury. However, the certificate issued by Morya Hospital, Kolhapur shows that there was suspected fracture on the posterior parietal region and the injury was described as a grievous injury.

6. A letter dated 16.6.2020 issued to the Police by Morya Hospital, Kolhapur shows that the Applicant's father was admitted to that hospital from 3.6.2020 to 16.6.2020. He submitted that the Applicant had lodged a counter FIR in respect of injuries suffered by his father.

7. Shri Joshi, therefore, submitted that the description in the FIR and the statements of other eye witnesses is not correct. They have not explained the injuries suffered by the Applicant's father Balu Chougule. One of the the injuries was a grievous injury. He submitted that in any case there was no premeditation and no intention on the part of the Applicant and, therefore, the offence would not fall within the definition of murder.

8. Learned A.P.P. strongly opposed this Application. She submitted that the manner in which the assault continued even after the deceased had fallen down on the ground shows that the offence was serious and the intention was clear. She submitted that there was sufficient corroboration to the story of the informant as the eye witnesses have consistently narrated the same incident.

Reasons :

9. With the assistance of both the learned Counsel, I have perused the charge-sheet annexed to this Application. The narration in the FIR is supported by the eye witnesses Tabassum Fakruddin Mujawar – widow of the deceased, Jamela Rafiq Mujawar – sister of the deceased, Jishan @ Javed Fakruddin Mujawar – another son of the deceased, and Nihal Rafiq Mujawar – nephew of the deceased. All of them are the family members of the first informant and they have supported the case of the prosecution by narrating the incident in the same manner as is narrated in the FIR. Thus the prosecution story, at the highest, shows that the Applicant had given one

blow on the head of the deceased, because of which he had fallen down.

10. It is important to note that there are allegations that the Applicant's brother Sagar Chougule also gave a blow with stick on the head of the deceased. The post-mortem notes show that there were two injuries on the head and other injuries were on the shoulder, back and left leg. The cause of death was mentioned as "head injury (unnatural)". However, the deceased had died on the next day at 10:45 a.m..

11. The Applicant had given one blow though he has ample opportunity to inflict more damage on the deceased with the stick which he picked up. The deceased was at his mercy, but, no further blow was given by him. The Applicant has himself picked up a stick lying on the spot. He was not carrying any weapon and he had not approached the deceased. It was the other way round. The deceased and his family had come to the field questioning the Applicant and his family about cultivation of that land.

12. It is also important to note that the Applicant's brother Sagar Chougule is granted bail by the Sessions Court. He is also attributed the same role of giving blow on the head of the deceased Fakruddin. Therefore on principles of parity also, the Applicant's case needs to be considered from that angle. As mentioned earlier, though there were two injuries on the head, one blow had caused the maximum damage causing fracture of the base of the skull. The author of that injury would either be the present Applicant or his brother. But since the brother of the Applicant is granted bail, the Applicant also deserves similar treatment on the principles of parity.

13. The injuries suffered by the Applicant's father Balu Chougule also assume importance. As per the charge-sheet papers, the Applicant's father was in hospital for about 13 days. Thus, he had also suffered grievous injuries which are not explained by the informant or any other eye witnesses. Therefore, some doubt is created about the version given by the informant and other eye witnesses.

14. The Applicant is already in custody since 4.6.2020. The investigation is over. His further custody for investigation purpose is not required. The Applicant does not have criminal antecedents. Therefore, he deserves to be released on bail.

15. Hence, the following order :

ORDER

(i) In connection with C.R.No.100/2020 registered with Ispurli Police Station, District-Kolhapur, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) Criminal Bail Application stands disposed of accordingly.

Pradeepkumar
P. Deshmane

Digitally signed by
Pradeepkumar P.
Deshmane
Date: 2021.01.14
17:30:11 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)