

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

ANTICIPATORY BAIL APPLICATION NO. 1025 OF 2020

1. Balaji Manohar Munde
2. Rakesh Kumar Kapil Dev Singh Applicants
Versus
The State of Maharashtra Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 14 OF 2021

1. Bhagwan Lavhersingh Yadav
2. Satyappa Mallappa Magadum
3. Vijendra Singh Balbir Singh Yadav Applicants
Versus
The State of Maharashtra Respondent

WITH

INTERIM APPLICATION NO. 1493 OF 2020

Mrs. Rupali Ganesh Thokal Intervenor

In the matter between

Balaji Munde and Anr. Applicants
Versus
The State of Maharashtra Respondent

Mr. Gaurav M. Parkar for the applicants in both ABA's
Smt. A.A. Takalkar, APP for the State/Respondent.
Mr. Narayan Sitaram Pawar, for the Intervenor.

CORAM :SARANG V. KOTWAL, J.
DATE :18th MARCH, 2021

P.C. :

1. Both these applications are decided by this common order because they arise out of the same investigation and same incident. For the sake of convenience the applicants are referred to by their names in the following discussions.
2. All the applicants are serving in Army. They are seeking anticipatory bail in connection with C.R.No. 54 of 2020 registered at Murud Police Station, on 27/11/2020 under sections read with Section 302, 120-B of the Indian Penal Code read with section 34 of the Indian Penal Code.
3. Heard Mr. Gaurav M. Parkar, learned counsel for the applicant, Mr Naryan Pawar, learned Counsel for the Intervenor and Smt. A.A. Takalkar, learned APP for the State.
4. The FIR is lodged by one Rupali Ganesh Thokal, who is

widow of the deceased Ganesh Thokal. The allegations pertain to murder of Ganesh Thokal. He was also working in Army since 2003. All the accused were his friends. The deceased Ganpat Thokal had retired from his service on 31/7/2020. After that, the informant and the deceased started residing at Kamargaon, District Ahmednagar. All the applicants had visited the informant's and deceased's house. At that time, there was some discussion between the deceased Ganesh and the applicant Bhagwan Yadav in respect of return of Rs. 1 lakh. According to the first informant, deceased Ganpat had given Rs. 1 lakh to Bhagwan and he was not returning it and therefore, there was dispute between them. On 05/09/2020, the applicant Bhagwan called the deceased to Pune at Command hospital. The informant advised deceased Ganpat not to go there but inspite of her advice, he went there. He did not return home till late in the night. Therefore at 10 p.m. the informant called him telephonically. At that time, the deceased told her that he was with all the present applicants and that they had come to Murud-Kashid for picnic. On 06/09/2020, in the morning, at 10.00 a.m., the informant again

called him. Even, at that time, the deceased told her that he was with the applicants and that he would return in the night. At about 5.30 p.m. again the informant called him but that time phone was not answered. On the next day morning i.e. on 07/09/2020, at 7.30 a.m. dead body of the deceased was brought to his house in an ambulance. The informant saw that there were injuries on right eye and right ear of the deceased. She got suspicious. According to her a false accidental death report was lodged at Murud Police station. The deceased was a good swimmer. It could not be an accident. After that she pursued the matter with the Police Officers. Her statement was recorded on 03/10/2020. She expressed her suspicion against all the applicants and finally the FIR was lodged on 27/11/2020.

5. Learned Counsel for the applicant submitted that the applicants were friends of the deceased. The deceased had willingly gone with them. He submitted that if there was any dispute the deceased would not have gone with them. He submitted that the photographs would show that they were in

happy frame of mind and they were enjoying their picnic. He submitted that there is no reason for all of them to conspire to commit murder of the deceased. He submitted that there was no dispute between the applicant Bhagwan and the deceased in respect of Rs 1 lakh.

6. Learned Counsel appearing for the first informant opposed this application. He submitted that 8 days prior to the incident all the applicants had come to the house of the deceased and there was a quarrel regarding non payment of Rs. 1 lakh by the applicant Bhagwan. He submitted that the ADR was registered by the accused themselves and they have deliberately suppressed the facts. He submitted that since the deceased had left with the applicants, it was the duty of the applicant to have informed the informant about the death of the deceased but that was not done. This shows their guilty mind. The applicant's had gone to picnic without taking permission from their superiors and it was improbable that permission would have been granted to them in view of the spread Covid-19. He submitted that the

photographs show that the applicant Bhagwan was overpowering the deceased which is corroborated by the injuries seen on the face. He further submitted that none of the applicants tried to save the deceased which shows that it was not an accident but deliberate acts of commission of murder. He submitted that the so called eye witnesses were standing far away from the place and it was not possible for them to observe as to what had actually happened. Viscera in this case was not preserved which is also suspicious circumstance.

7. Learned APP opposed this application on the basis of the FIR and investigation papers.

8. I have considered these submissions. I have gone through the police papers. Learned APP produced the investigation papers before me. The most important statement in this investigation is statement of one Santosh Rane. He was a member of Kashid group gram panchyat. He was always helping the police in village. His wife was police patil of Kashid village. He

has stated that he had seen that on 06/09/2020 at about 12.30 p.m. seven persons were swimming in deep waters. He advised them not to continue the swimming because once there was low tide they could be pulled inside due to strong current. They had replied that they were from Army and they were good swimmers and that they would come out after some time. He has specifically stated that all of them were under influence of liquor and they continued swimming. This witness then returned home. At about 2.00 p.m. he again came back to the beach. He saw that seven Army men were still swimming in deep waters. Low tide had started and suddenly he heard shouts. One of them was drowning and others were trying to save him. One of them had thrown his pagdi towards him to save him but the said person had drowned in the water. After 15 to 20 minutes, a big wave threw him on the surface. He was taken out. He was unconscious. He was given first aid but he did not respond. Immediately police officers were informed and he was to primary health centre but the Doctor declared him dead.

9. The post mortem report gives cause of death as “ death due to asphyxia due to drowning”. No other injury was mentioned in column N. 17. I have also perused photographs in the investigation papers. Photographs of the dead body on the beach does not show the black eye. The investigating officer through learned APP has admitted this position. Even post mortem notes have not noted this particular black eye but subsequent photographs clearly shows that there was black eye on the dead body. A specific opinion was called for by the investigating officer from the Medical Officer attached to the Sub District Hospital Panvel about this position. A specific query in that behalf and the answers read thus:-

“ While transporting the dead body of the deceased to his native place Kamargaon, District Ahmednagar, his right eye was looking blackish. Why there is blackish colouration to right eye ?

Answer :- From the photographs provided to me it appeared that his right eye was blackish. This can be

called as black eye. There appears a bruise over right eye.

A bruise or contusion is injuries caused due to blunt force application leading to rupture of sub-cutaneous vasculature and subsequent bleeding into its vicinity with intact overlying skin. This is also termed as ecchymosis

These bruises appear after sustaining injury by blunt force application. Sometimes they are delayed by one or two days. (delayed bruise/come out bruise). Sometimes ecchymosis may not appear until after death. When a contusion has been caused a few hours or a day before death. They do not occur due to post mortem violence.

Delay in the appearance/revelation of a bruise is partly caused by continued bleeding from ruptured vessels, but mainly by precolation of free blood from its origin deeper in the tissues upwards towards the epidermis. Another factor may be

hemolysis, when the freed hemoglobin is able to stain the tissues in a more diffuse way. This latter mechanism is certainly the reason not only for the well known post mortem phenomenon of bruises becoming more prominent after death, but of new bruises appearing later where none was visible at an autopsy performed soon after death.

They can appear either at the site of impact or at a different place on the surface. (Migratory bruise/ movement of bruise). Additionally bruise may move under gravity, for example a bruise over forehead may gravitate down to eye leading to black eye. Similarly, a bruise of upper arm or thigh may surface down around elbow or knee.

Since bruise is caused due to extravasation of blood from the ruptured vasculature, they do not appear due to post mortem violence.

In the present case, it

appears that blackish colour imparted to the right eye is due to blunt force application either to right eye or to the forehead leading to bruise.
(Delayed and /or migratory bruise).”

10. There is a clear opinion that black eye in this case was termed as ecchymosis. These bruises appear after sustaining injury by blunt force application. They do not occur due to post mortem violence. This opinion is very significant. It is more than clear that the said black eye was result of blunt trauma caused by injury. It was not a post mortem injury. It was caused before death. Since morning, the deceased admittedly was with the applicants till his death. The eye witness who was on the beach had seen the incident from a distance and he had only seen when the deceased was already drowning. He had not actually witnessed the incident before that. He could only look in that direct after hearing shouts. Therefore what had transpired just before drowning could not have been explained by this witness. This piece of medical evidence is incriminating against the present

applicants. Similarly on this basis the custodial interrogation of the applicant is necessary because without such interrogation true events leading to this unfortunate event cannot be found out. This also has to be seen in the background of the allegations made by the widow of the deceased that there was a dispute regarding Rs. 1 lakh and there was a quarrel prior to the date of the incident.

11. Learned Counsel for the applicant submitted that there was delay in lodging the FIR as it was lodged in November 2020. However, learned Counsel for the intervenor has explained that right from the day one, the informant was trying to make efforts so that the FIR could be lodged promptly but she was not successful because police did not take her case seriously for whatever reasons. In this view of the matter, though the applicants are from Army, matter require thorough investigation and custodial interrogation in this particular case is necessary. Therefore, both the applications are rejected.

12. At this stage, learned Counsel for the applicant submits

that interim order running in favour of the applicants be continued for a few more days. However, considering seriousness of the incident and urgent need of custodial interrogation, this request is not granted. Interim order granted earlier stands vacated.

13. In view of disposal of both these anticipatory bail applications, nothing survives in the Interim Application No. 1493 of 2020, and the same is also disposed off.

(SARANG V. KOTWAL, J.)