

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL BAIL APPLICATION (BA) NO. 136 OF 2021

Gautam Pandurang Maghade

..vs..

State of Maharashtra, thr. D.G.P. Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for Applicant.
Ms. N.P. Mehta, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 31/03/2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard. This is an application for grant of regular bail in connection with Crime No.311 of 2020 registered with Andhera Police Station, Tq. Chikhali, District Buldhana for the offence punishable under Sections 302, 143, 147, 148, 149 and 506 of the Indian Penal Code. At the instance of report dated 13.09.2020 lodged by brother of the deceased, the Crime was registered. It is the prosecution case that on 10.09.2020, around 9.30 pm, the informant Nivrutti Rakhtade (brother of the deceased) learnt that some villagers including the Applicant took a quarrel with the deceased Dyaneshwar at the instance of cultivating land of one Kisan Wankhede. At that time, all of them abused deceased Dyaneshwar and dealt with fist blows, kicks and also beaten by stick. Immediately, the informant went to the place and brought Dyaneshwar in

injured condition at their house and on the following day he was admitted in the Hospital. In the meantime, deceased Dyaneshwar told that rest of assailants beating him by kicks whilst Applicant Gautam Maghade dealt with stick blows.

3. The State resisted bail by filing affidavit-in-reply. It is contended that, the Applicant had specifically dealt repeated stick blows on the person of the deceased which took his life. There are eye-witnesses to the incident. Moreover, it is pointed out that there were several contusion injuries at the person of the deceased which could be found in post mortem report. Considering the nature and gravity, the State prayed for rejection of bail.

4. Rest of the co-accused are released on regular bail by this Court vide order dated 18.02.2021. True, the allegations against rest of the assailants are of beating by fist blows and kicks whilst the role assigned to the Applicant is of giving stick blows and therefore, his case has to be considered independently. Learned Counsel for the Applicant mainly attack at the genesis of the case by submitting that there was inordinate delay in lodgment of First Information Report and therefore, the prosecution case itself is doubtful. It is submitted that the deceased Dyaneshwar under the influence of liquor had outraged the modesty of one lady, on which the villagers beaten him. It is the submission of learned Counsel for the Applicant that, as per the Pathological report, the deceased was having 50% blockages in heart and that may be cause of death. Lastly, it is submitted that at the most, on the basis of allegation, it can be said that the alleged

act would attract the offence punishable under Section 304 part II of the Indian Penal Code.

5. Undisputedly, the alleged incident took place on 10.09.2020 around 9.30 pm which was viewed by some of the villagers. The informant got knowledge of the occurrence within few hours from the incident. In that context, the submission that there is delay of two days in filing First Information Report, carries substance. The statements of the informant and eye-witnesses disclose that 4 to 5 persons assaulted the deceased by fist blows and kicks whilst Applicant gave stick blows. There are no allegations that any deadly weapon was used in the occurrence. Though the incident took place on 10.09.2020 at 9.30 pm, deceased Dyaneshwar was not admitted to the Hospital immediately, but on the following day around 3.00 pm he was admitted. The Post Mortem report discloses that cause of death was reserved as viscera sent for chemical analysis. Viscera report is produced which shows that there was no poisonous substance. In the circumstance, at present, there is no firm opinion about the cause of death. Learned Counsel for the Applicant though argued that at the most, it is a case of culpable homicidal not amounting to murder however, that would be seen at the time of trial. But, certainly this fact has to be taken into account that there was assault by 4 to 5 persons in which the Applicant took part with the aid of stick. The submission that though the Applicant used stick on the date of occurrence it was not disclosed at the earliest, carries weight. Now, investigation is complete and charge-sheet has been filed. Merely, because of Applicant was holding a stick at relevant time, could not be

considered as a reason to detain him till conclusion of trial. The deceased and the assailants belongs to the same area, therefore, certain stringent conditions can put to the Applicant while releasing him on bail. Having regard to the nature of allegations and all other relevant factors, the Applicant is entitled for bail. In view of that, following order is passed :

- (a) The Applicant Gautam Pandurang Maghade be released on bail in connection with Crime No.311 of 2020 registered with Andhera Police Station, Taluka Chikhali, District Buldhana relating to offence punishable under Sections 302, 143, 147, 148, 149 and 504 of the Indian Penal Code, on his furnishing P.R. bond of Rs.50,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter into the limits of entire Chikhali Taluka till conclusion of trial.
- (c) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution witness in any manner.

6. Criminal Application stands disposed of accordingly.

JUDGE

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