

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (BA) No. 553 of 2021

[Ganesh s/o Sitaram Kakde and ors. ..vs.. The State of Maharashtra through P.S.O., P.S. Ansing,
Tq. and Dist. Washim]

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

Court's or Judge's orders

Mr. Avinash Gupta, Senior Advocate with Mr. A. A. Gupta, Advocate for
the applicants
Mr. N. S. Rao, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 07-07-2021

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

2. The applicants are arraigned as accused 1, 3 and 4 in Crime 73/2021 registered with Police Station Ansing, Tahsil and District Washim for the offences punishable under Sections 302 and 504 read with Section 34 of the Indian Penal Code.

3. The prosecution version as is discernible from the report lodged by the wife of the deceased and the material available in the case diary is that in the midst of a drinking session, accused Ganesh kicked the deceased

who fell down from the otta (which broadly means 'concrete platform').

4. The incident occurred on 23-4-2021 and the report is lodged by the wife of the deceased on 26-4-2021.

5. According to the wife of the deceased, the applicants Ganesh and Madhav were with her when the injured was taken to the hospital. The wife of the deceased, then subsequently alleged that her injured husband disclosed to have been kicked by applicant Ganesh and abused and slapped by the applicants Raju and Madhav.

6. The incident occurred in the field of co-accused Sudhir Somani. While it would not be necessary, and indeed it may be inappropriate, to make any decisive observation on the penal provisions invoked, even if, the allegations are accepted at their face value, according to the learned Senior Counsel Mr. Gupta, there is scope to argue that Section 302 of the Indian Penal Code could

not have been invoked. While this submission will have to be addressed by the learned trial Court, *prima facie* the submission is indeed formidable.

7. Nothing is brought to my notice to suggest that the applicants have adverse antecedents or that they would not be available to face the trial.

8. The postmortem report refers to a few abrasions and the cause of death is shown to be the injury to spinal cord, particularly, C-3 and C-4. While the medical evidence may indeed be consistent with the prosecution version that it was eventually a fall from the otta which caused the injury, whether there was an intention to cause such injury as would lead to death would again be a matter for the trial Court to look into.

9. I am satisfied, on a holistic consideration of the material on record, that the applicants have made out a case for grant of bail.

10. The applicants be released from custody subject to furnishing PR bond of ₹ 15,000/- (Rupees Fifteen

Thousand) each with solvent surety of like amount on following conditions.

(a) The applicants shall not influence the witnesses directly or indirectly.

(b) The applicants shall not leave the country without the previous permission of the jurisdictional Court.

11. The application is allowed in the aforestated terms.

JUDGE

wasnik