

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

Criminal Application (BA) No. 880 of 2021

[Shrawan Daulatrao Dhone and anr. ..vs.. The State of Maharashtra through P.S.O., P.S. Jalakheda,
Tah. Narkhed, Dist. Nagpur]

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

Court's or Judge's orders

Mr. Bhushan Daffe, Advocate for the applicants
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 11-10-2021

The applicants, who are father and son respectively, are implicated in Crime 36/2021 registered with Police Station, Jalalkheda, Tahsil Narkhed, District Nagpur for the offences punishable under Sections 143, 147, 148, 149, 302, 326 and 307 of the Indian Penal Code, along with three other family members including one juvenile.

2. The prosecution case is that the accused suspected that Purushottam Tayade was in illicit relationship with the wife of co-accused Janardan. The accused formed an unlawful assembly and assaulted Purushottam Tayade with stick and rod on 11-2-2021 at 8.30 p.m.

3. While there is no eye witness to the actual assault, the statement of Purushottam Tayade was recorded at the hospital on 13-2-2021 in which he stated that all the five accused assaulted him with stick and rod and that he had already undergone abdomen surgery.

4. Purushottam Tayade expired on 18-2-2021 and the statement recorded is, therefore, admissible as dying declaration under Section 32 of the Indian Evidence Act. Other than the said dying declaration, statement of one witness is recorded more than two months of the incident in which he states to have witnessed a verbal altercation between the deceased and the applicants. The said witness has, however, not seen the assault.

5. Perusal of the postmortem report shows that one of the three injuries which the doctor opined, may have caused death is the rupture/shattering of spleen. It would ultimately for the trial Court to ascertain on the basis of evidence whether the previous surgery played any role in the death.

6. At this stage, I am inclined to grant bail.

7. The investigation is complete and the charge-sheet is filed. The prosecution case entirely rests on the dying declaration and there is no possibility that if released, the applicants will be in a position to influence any witness as such, inasmuch as there is no witness to the assault. The stick and the rod allegedly used in the assault are recovered from the co-accused.

8. Considering that the applicants do not have adverse antecedents, that they do not pose a flight risk and applicant 2 Nilesh is relatively young, aged 19 years, a case for bail is made out.

9. The application is allowed subject to the following conditions.

(a) The applicants be released on bail on furnishing PR bond of ₹ 16,000/- (Rupees Sixteen Thousand) each with solvent surety of like amount.

(b) The applicants shall not tamper with the evidence or make any attempt to influence the witnesses, directly or indirectly.

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

JUDGE

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