

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

CRIMINAL APPLICATION (BA) NO.1118 OF 2021

(Praful s/o Madhukarrao Gadhave Vs. The State of Maharashtra thr. PSO PS Katol,
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. R. D. Hajare, Advocate appointed for Applicant.
Mr. M. K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 8th DECEMBER, 2021.

The applicant and the co-accused, who are brothers, are accused of having caused the death of their uncle Ashok.

2. Bapurao Gadhave had three sons Madhukar, Surendra and Ashok. Bapurao partitioned the nine acres joint family agricultural field amongst his three sons, and each received portion admeasuring three acres.

3. It appears, that portion admeasuring 10 ft. in width became a bone of contention between Ashok and Madhukar.

4. The incident which occurred on 17.06.2021 is a fall out of the dispute. A relatively independent and objective account of what happened is discernible from the statement of witness Mahendra, who is the son of Surendra

Gadhane and is the cousin of the applicant and the nephew of the deceased.

5. Mahendra speaks of some altercation between the deceased and Gopal in the morning during the course of which Gopal allegedly abused his uncle Ashok who in turn slapped Gopal. According to Mahendra, the altercation spilled over and at 01:00 p.m. he saw that Gopal and the applicant were abusing Ashok. During the course of the verbal altercation, the applicant raised a stick threateningly, Mahendra intervened and received a blow on his hand. According to Mahendra, Gopal inflicted an axe blow on the head of his uncle Ashok. The autopsy report shows that it is this blow which has caused the death.

6. Witness Mahendra does not in so many words say that the applicant Praful was successful in inflicting the stick blow on the head of the deceased. What is said is that the applicant lifted the stick threateningly.

7. Minute examination of material is best avoided. However, even if a *prima facie* view were to be taken that the applicant Praful did inflict a stick blow on the head of his uncle Ashok, apparently the death is due to the axe blow inflicted by his brother Gopal.

8. While the prosecution has invoked Section 34 of IPC, whether the applicant shared common intention to cause death would be the subject of trial, particularly since

there was no unusual weapon used as such. As agriculturists working in the field, the applicant and the co-accused would be expected to have the stick or axe. This is a *prima facie* observation.

9. The applicant has no criminal antecedents and it is not even argued that he would not be available to face the trial. I am, therefore, inclined to grant bail, however subject to imposition of stringent conditions, since the applicant and the family of the deceased are owners of adjoining agricultural fields and the material witness is closely related to both, the complainant and the applicant.

10. The application is allowed.

11. The applicant shall be released on bail on executing personal bond of Rs.16,000/- (Rupees Sixteen Thousand) with a solvent surety of the like amount.

12. The applicant shall not enter the territorial limits of village Paradsinga, Tahsil Katol, District Nagpur, unless specifically permitted to do so by the jurisdictional court for just and exceptional reasons, till all the material witnesses are examined in the trial.

13. The applicant shall not indulge in any criminal activity. The applicant shall not make any attempt to contact any witness or to otherwise influence the course of the trial.

14. Even a singular breach of the conditions imposed shall entail cancellation of bail.

15. The applicant shall not leave the country without the permission of the jurisdictional Court.

16. The fees of the appointed counsel be quantified and paid in accordance with the rules.

JUDGE

NSN