

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

CRIMINAL APPLICATION [ABA] NO. 793/2021.

Mahesh Gurudayal Prajapati and others.

-VERSUS-

The State of Maharashtra through P.S. Asegaon, District Amravati.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.J. Shinde, Advocate for Applicants.
Shri H.D. Dubey, A.P.P. for the Non-applicant – State.
Shri S.S. Dhengale, Advocate for the Informant.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 21, 2021.

Heard.

2. Applicant nos. 1 to 3 are seeking pre-arrest protection in connection with Crime No.232/2021 registered with the non-applicant Asegaon Police Station for the offence punishable under Sections 302, 294, 504, 506 read with Section 34 of the Indian Penal Code. Applicants are claiming bail primely on the ground that the incident as stated in the first information report, even if taken as it stand, it does not discloses the commission of offence punishable

2

under Section 302 of the Indian Penal Code.

3. It is submitted that as per the prosecution case, the allegation is of merely giving a push in quarrel which resulted into death due to fall on head. It is submitted that after one year from the occurrence, the crime was registered therefore, there is no necessity of custodial interrogation.

4. The State has resisted the bail by filing reply affidavit. It is contended that because of the act of applicants, an old man died on the date of occurrence itself. There are statements of witnesses who stated that applicant nos. 2 and 3 have pushed the deceased Ambadas resulting into his death. Considering the seriousness of the offence, bail is prayed to be rejected. The learned counsel appearing for the informant has also made submission in resistance to grant of bail.

5. At the instance of a report lodged by the son of the deceased namely Rajesh, crime came to be registered. It is informants case that applicants are residing in his neighborhood and there was a disputed in between them at the instance of construction of road. On the date of occurrence, there was a quarrel

3

in which applicant nos. 2 and 3 have pushed informant's father Ambadas aged 70 years, who fell on the concrete road, and died due to head injury.

6. Perusal of police paper prima facie does not indicate that either of the applicants intended to cause death or even they had knowledge that by simple push, Ambadas may die. Perusal of post mortem note indicates that due to internal head injury, Ambadas died. It reveals from the record that after one week from the occurrence, the informant has filed a report with the police, however, police did not take cognizance. Ultimately the informant has filed an application to the Magistrate in terms of Section 156[3] of the Code of Criminal Procedure, on which the Magistrate directed to register first information report.

7. It emerges that during quarrel applicants have pushed the deceased which unfortunately became fatal. The prosecution is unable to state as to why applicants' custodial interrogation is necessary. Apparently nothing has to be seized at the instance of applicants. Considering the special feature of the case the applicants' liberty can be protected by directing

4

them to join the course of investigation. In view of this, following order is passed.

- (a) Criminal Application is allowed and disposed of.
- (b) In the event of arrest of applicants / accused (1) Mahesh Gurudayal Prajapati (2) Ajay Mahesh Prajapati and (3) Banti Mahesh Prajapati, in connection with Crime No.232/2021 registered with the non-applicant Asegaon Police Station for the offence punishable under Sections 302, 294, 504, 506 read with Section 34 of the Indian Penal Code, they be released on bail on their furnishing P.R. Bond in the sum of Rs.25,000/- each, with one surety in the like amount.
- (c) Applicants to attend the concerned police station on every Wednesday and Sunday in between 11 a.m. to 2 p.m., till the filing of charge sheet or 90 days which ever is earlier.
- (d) Applicants shall not tamper with the prosecution evidence in any manner.

JUDGE

Rgd.