

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.48 OF 2022

IN

CRIMINAL APPEAL NO. 8 OF 2022

1.	Mangalsing @ Bhausaheb Natha Thansing Girase	
2.	Rajesing @ Raosaheb Thansing Girase	
3.	Pravin Zulalsing Girase	Applicants
Versus		
	The State of Maharashtra	Respondent

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Mr. A.B. Girase, Advocate for the applicants.
Smt. D.S. Jape, A.P.P. for respondent – State.

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**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 24-02-2022.

ORDER (Per Sandipkumar C. More) :

1. This is an application filed by the applicants, who are the original accused, for suspension of their substantive sentence of imprisonment and their release on bail pending hearing and final and final disposal of the criminal appeal. Learned Sessions Judge, Nandurbar in Sessions Case No.34/2018 by impugned judgment and order dated 16.12.2021 has convicted the applicants for the offences

punishable under Sections 302 and 323 read with Section 34 of the Indian Penal Code ("IPC" for short) and sentenced them to suffer imprisonment for life alongwith fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for six months for the offence under Section 302 read with Section 34 of I.P.C. and rigorous imprisonment for one year and to pay fine of Rs. 1,000/- each in default to suffer rigorous imprisonment for three months for the offence under Section 323 read with Section 34 of the I.P.C.

2. Learned Counsel for the applicants submits that the allegations against the present applicants are only in respect of assaulting and beating the deceased Arun, who is brother of informant Suresh Sonu Koli, with fist and kicks. However, the said Arun died due to head injury which was impossible by merely beating with fists and kicks. Learned Counsel for the applicants submits that at the time of inquest panchnama no head injury was in fact noticed and it was added later on by way of manipulation at the hands of Investigating Officer. He further submits that the Investigating Officer also mentioned registration number of F.I.R. in the spot panchnama (Exh. 68) which had in fact carried out before registration of the crime. Learned Counsel for the applicants further pointed out that all the applicants

were on bail during pendency of the trial, and therefore, considering the cause of death of deceased Arun, they be released on bail during the pendency of this appeal.

3. On the contrary, learned A.P.P. strongly opposed the application and submits that the learned trial Court after carefully going through the evidence on record has found the present applicants guilty for the charges levelled against them. Moreover, there are eye witnesses who have stated as to how the applicants assaulted the deceased which resulted in his death. He further submits that the medical evidence on record also indicates that the deceased must have died due to the beating extended by present applicants only. As such, he prayed for dismissal of the application.

4. We have carefully gone through the impugned judgment and notes of evidence. We also considered the submissions of the learned Counsel for the applicants and learned A.P.P.

5. On going through the evidence on record, admittedly the informant Suresh i.e. PW-1 has stated that he saw all the applicants extended beating to his brother Arun and due to the said beating to private part of Arun, he died. Further, there are also other eye witnesses to the incident

namely PW-4 Gopal Ananda Koli and PW-5 Prashant Yuvraj Koli. However, it is important to note that nobody is saying that any dangerous weapon was used by the applicants to extend the beating to the deceased. On the contrary, prosecution is claiming that the deceased was beaten by the applicants only with the help of kicks and fists blows. On perusal of the medical evidence on record speaking through PW-7 Dr. Rohan Thorat, it appears that deceased Arun had died due to head injury associated with haemoperitoneum. It is significant to note that during the investigation, query was put up to the said Medical Officer, District Hospital, Nandurbar vide Exh. 64 as to what was the cause of fatal injury i.e. head injury associated with haemoperitoneum sustained by the deceased. Thereafter the said Medical Officer as per Exh. 65 had given his opinion mentioning that the aforesaid fatal head injury was possible due to hard and blunt object or due to fall on hard surface. PW-7 i.e. the said Medical Officer Dr. Rohan Thorat has also deposed as per the aforesaid opinion in his chief examination itself. He has stated that the injuries caused to deceased could be possible due to hard and blunt objector falling on the hard surface. It is significant to note that the allegations against the present applicants are only in respect of beating the deceased with

the help kicks and fist blows. Therefore, there appears strong suspicion as to whether the fatal injury to the head was caused by such kicks and fist blows. Moreover, the applicants were on bail during the course of trial and there were no criminal antecedents to their credit. Considering these aspects, we are of the opinion that the applicants can be released on bail pending hearing and final disposal of the criminal appeal. Hence, we pass the following order.

ORDER

- (i) Criminal Application is hereby allowed.
- (ii) Substantive sentence of imprisonment recorded against the applicants by learned Sessions Judge, Nandurbar in Sessions Case No. 34/2018 under the impugned judgment and order dated 16.12.2021, is hereby suspended and the applicants are released on bail on executing P.R. bond of Rs.20,000/- each with one solvent surety each in the like amount, during the pendency of this criminal appeal.
- (iii) Criminal Application is accordingly disposed of

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)