

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 153 OF 2022

1. Bhavsing Devla @ Deva Bhil (Shemle)
 2. Ravindra Devla @ Deva Bhil (Shemle) Applicants
- Versus

The State of Maharashtra Respondent

Mr. G. D. Jain, Advocate for the applicants.
Mr. S. B. Narwade, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 14th MARCH, 2022.

PER COURT :

1. Heard.
2. Applicant No. 1 Bhavsing is the cousin of the informant (son of maternal uncle). Applicant No. 1 Bhavsing has a daughter by the name of Kavita. The cousin of the informant by the name of Baising had sent a proposal for Kavita for the marriage of his son Rakesh. However, Baising got said Kavita married off to someone else.

3. On 26th August, 2020, at 9.00 pm, applicants No. 1 and 2 along with other accused went to the house of the informant. Applicant No. 1 asked Baising as to why Rakesh calls up Kavita. Applicant No. 1 Bhavsing assaulted deceased Baising on his head by means of an iron rod. Baising sustained head injury and he fell down on the ground. Thereafter, all the accused along with the applicants left the spot. After 10/15 minutes, they again came back. They assaulted the informant and his wife by means of an iron rod and a cycle chain. When the son of the informant by the name of Dinesh Padvi and Pintya Jelsing Bhil (son-in-law of Baising) came there for their rescue, they were assaulted by applicants No. 1 and 2. Thereafter, all the injured were taken to the police station. Police did not refer them to the hospital. Since all of them were feeling better, they came back to their village. At 4.00 am, Baising started feeling uneasy. He was taken to a private hospital by the name of Kulkarni Hospital at Dongargaon. Doctors in the hospital advised that Baising be taken to the Government Hospital. On arrival at Government Hospital, Baising was declared dead. On these allegations, First Information Report came to be lodged against the applicants for the offences punishable under Sections 302, 307, 324, 504, 506 read with Section 34 of the Indian Penal Code.

4. Shri Jain, learned counsel for the applicants, submits that the incident took place at 9.00 pm. Deceased Baising was taken to the police station, Shahada. Police did not refer him to the Government Hospital. Since everyone was feeling better, all of them came back to the village. At 4.00 am, Baising was taken to Kulkarni Hospital and from there he was advised to be taken to the Government Hospital. In the Government Hospital, he was declared dead on arrival. He submits that this chronology of events shows that the deceased was not referred to hospital by the police. He submits that this goes to show that the deceased had no injury on his head. He further submits that if the applicants are released on bail, they shall not enter the village Bhulane as well as Taluka Shahada, till the conclusion of the trial.

5. Learned APP Shri Narwade submits that all the eye-witnesses have stated that the deceased was assaulted on head by means of an iron rod. PM report shows that the deceased had two fractures on head. Even inquest panchanama shows that the deceased had fracture. He submits that this evidence shows that the deceased was assaulted by means of an iron rod on head. He further submits that the clothes of the accused were stained with

blood and the iron rod has been recovered from applicant No. 1. He points out that the deceased was not taken to Kulkarni Hospital but he was infact taken to Sarthak Hospital. He further submits that this clarification is given in the supplementary statement by the informant.

6. It is pertinent to note that the incident took place on 26th August, 2021 at 9.00 pm. Soon after the incident, all the injured were taken to the police station. As per PM report, the deceased had sustained two fractures. It is difficult to fathom that these two fractures went unnoticed by the police. All the injured came back to the village. At 4.00 am, deceased started feeling uneasy and, therefore, he was taken to Sarthak Hospital. Thus, there is gap of almost seven hours from the time of the incident and the time the deceased was taken to Sarthak Hospital. Nothing has been placed on record to indicate what happened in between. The certificate issued by Sarthak Hospital is produced on record. It shows that the deceased was assaulted by somebody at home before one day. If the deceased had been assaulted by the applicant, while recording history in the Sarthak Hospital, the name of applicant, in all probability, ought to have been mentioned. Therefore, it is difficult at

this *prima facie* stage to state that the injuries were sustained by the deceased during the incident. In this view of the matter, I am inclined to release both the applicants on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Both the applicants be released on PR Bond of Rs.50,000/- (Rs. Fifty Thousand) with one solvent surety each in the like amount in connection with Crime No. 0408/2020 registered with Shahada Police Station, Dist. Nandurbar, for the offence punishable under Sections 302, 307, 324, 504, 506 read with Section 34 of the Indian Penal Code, on condition that they shall not tamper the prosecution evidence and shall not enter village Bhulane and Taluka Shahada, till the conclusion of the trial, except for attending the Court on the dates fixed during the trial.
- iii) Application is disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get

influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

dyb