

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 BAIL APPLICATION NO. 292 OF 2022

1. Adinath @ Raju s/o. Nivrutti Solav,
2. Rameshwar s/o. Anandrao Darkonde

VERSUS

The State of Maharashtra

Shri. V. D. Sapkal, Senior Advocate i/b Shri. S. V. Suryawanshi,
Advocate for the applicants
Shri. S. B. Narwade, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th March, 2022**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No. 0133 of 2021 registered with Tadkalas Police Station, District Parbhani for the offences punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that the applicants were abducted by other accused and they were kept in confinement in a room near the hotel Raj Bar. The abductors

went out of the room for dinner and deceased Pushkar and Pratap Ghatol were assigned the duty of guarding the applicants. Pushkar and Pratap Ghatol started drinking alcohol. Taking advantage of this, applicants freed themselves and tried to escape and while escaping, they assaulted deceased and Pratap Ghatol. In the process, they committed murder of the deceased Pushkar. On these allegations FIR came to be lodged under aforesaid sections.

3. Heard learned Senior counsel Shri. Sapkal for the applicant and learned APP Shri. Narwade for the respondent/State.

4. Learned Senior counsel Shri. Sapkal submits that applicants had right of private defence by virtue of Section 100 of the Indian Penal Code.

5. Learned APP Shri. Narwade submits that there are eye witnesses to the incident. The account of eye witnesses clearly shows that applicants assaulted deceased by means of a knife and Post-mortem report shows that deceased had 3 stab

injuries. He submits that applicants exceeded their right of private defence. Therefore, they may not be released on bail.

6. In terms of Section 97 of the IPC everyone has a right to protect his person and property from the external assault. Admittedly, applicant Nos. 1 and 2 were abducted and they were confined in a room near hotel Raj Bar. Section 100 of the IPC enables the person kidnapped or abducted to cause death of abductors by way of right of private defence. Section 100 of the IPC reads as under:-

"100. When the right of private defence of the body extends to causing death.- The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.- An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust;

Fifthly- An assault with the intention of kidnapping or abducting;

Sixthly – An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. Seventhly- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

7. Prosecution itself has come with the case that, these two applicants were abducted and confined in a room. Therefore, case of the applicants squarely falls in clause fifthly of Section 100 of the IPC i.e. an assault with the intention of kidnapping or abducting. In such case the right of private defence of the body extends to voluntary causing of death. Whether applicants exceeded their right of private defence is a matter to be considered during trial. In this view of the matter, I am inclined to release the applicants on bail. Hence the order.

ORDER

1. Application is allowed.
2. Each of the applicants be released on bail on their furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount in connection with CR No. 0133 of 2021 under Sections 302, 323 read with

Section 34 of the Indian Penal Code registered with Tadkalas Police Station, District Parbhani, on condition that they shall not tamper the prosecution evidence.

3. 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.

4. Application is disposed of.

[M. G. SEWLIKAR, J.]

ssp