

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

**934 BAIL APPLICATION NO.293 OF 2022
WITH APPLN/981/2022 IN BA/293/2022**

1. Khushal s/o. Mohanrao Patil
2. Trimbak s/o Madhav Patil

VERSUS

The State of Maharashtra

Shri.S. B. Bhapkar, Advocate for the applicants
Shri. G. O. Wattamwar, APP for the respondent/State
Shri. H. I. Pathan, Advocate h/f Shri. P. P. Dama, Advocate for
the informant

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

PER COURT :-

1. Heard.

2. Mahesh Suresh Patil (since deceased) was the son of the informant. On 9th August, 2021 at 08.30 a.m. deceased had an altercation with accused Aaditya Patil. Both of them had abused each other. Mahesh Patil left for the field and Aaditya Patil left for home. While returning home on motorcycle, applicant Khusal Patil pulled the deceased Mahesh and took him to his house. Applicant No. 1 held him and another brother of

applicant No. 1 by the name of Maroti @ Manoj Ashok Patil dealt a blow of bat on the head of the deceased Mahesh. Accused Sunita Patil, Aaditya Patil, Trimbak- applicant No. 2, Shailesh Trimbak Patil beat deceased Mahesh with kicks and fist blows. On hearing the shouts, informant and her daughter went to the house of Khusal Patil and were bringing deceased Mahesh home. On the road all these persons came there running and assaulted deceased Mahesh with kicks and fist blows. He was rescued by Shivshankar Madhav Patil, Satish Patil, Maroti Laxman Chandapure, Dilip Mahadu Sarode, Sheshrao Deovrao Patil. Deceased fell unconscious. Thereafter, he was shifted to the hospital of Aaneroy at Umri. Deceased was advised to be taken to Nanded. Deceased died during treatment on 12th August, 2021 in Arogya Hospital, Nizamabad.

3. Learned counsel Shri. Bhapkar for the applicants submits that deceased was not shifted to the hospital immediately after the incident. But he was shifted to the hospital on the next day of the incident. He submits that Post-mortem report does not give any cause of death. Final cause of death also does not give any indication that death was due to the

alleged assault by the applicants.

4. Learned APP Shri. Wattamwar and learned counsel Shri. Pathan for the informant submit that there are eye witnesses to the incident who state that deceased had caused head injury on account of which deceased died. They submit that cause of death is cerebellar infarction with severe congestion. Final cause of death is acute cerebellar infarction. They submit that this injury can be caused because of assault by bat. Learned counsel Shri. Pathan submits that both the applicants have criminal antecedents.

5. Charge is filed. On perusal of the charge-sheet it is seen that fatal blow was given by Maroti Patil. The Medical Officer conducting autopsy has not given cause of death. On receipt of hystopathological report, Medical Officer has given final cause of death as cerebellar infarction with severe congestion. Final cause of death is acute cerebellar infarction. Medical opinion doesn't say that the cerebellar infarction was caused because of the alleged assault by the applicants. It is true that there are statements of witnesses indicating that

deceased was assaulted by the applicants and other accused. However, medical opinion doesn't show that death was caused due to assault. Moreover the applicants have produced the medical certificate from Aarogya Hospital, Nizamabad which shows that while recording history it was stated that deceased was assaulted by unknown person. In this backdrop, when there is no evidence to indicate that death was due to the assault by the applicants and that there is no medical opinion indicating that death was caused due to assault, I am inclined to release the applicants on bail. Criminal antecedents of the applicants will have relevance only when prima facie case is made out in the offence in which applicants are seeking bail. In the case at hand apparently there appears no prima faice case against the applicants. I am, therefore, 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. 20,000/- (Rupees Twenty Thousand only) with one solvent surety in the like amount in connection with CR No. 0182 of 2021 under Sections 302, 307, 323, 143,

147, 148, 149, 504 of the Indian Penal Code registered with Umri Police Station, District Nanded, on condition that they shall not pressurize the witnesses and shall not enter the village Nimtek, Taluka Umari, Dist. Nanded till the conclusion of the trial.

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.

. Pending application, if any, stands disposed of.

[M. G. SEWLIKAR, J.]

ssp