

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

36 CRIMINAL APPLICATION NO.752 OF 2022
IN
CRIMINAL APPEAL NO.162 OF 2022

1. PANDU HIRAMAN MALCHE
2. SUBHASH PANDU MALCHE
3. DNYANESHWAR PANDU MALCHE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Syed A R. h/f S P Brahme
APP for Respondents: Mr. S D Ghayal

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: March 21, 2022

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PER COURT :-

1. Pending the criminal appeal no.162 of 2022, preferred against the judgment and order of conviction passed by the learned Additional Sessions Judge, Dhule dated 4.2.2022 in Sessions Case No.257 of 2019 convicting thereby the applicants/accused for the offence punishable under section 302 r/w 34 of the Indian Penal Code and sentencing them to suffer imprisonment of life and to pay a fine of Rs.2,000/- each, in default of payment of fine to suffer further R.I. for three months, the applicants have preferred this

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criminal application for suspension of substantive part of the sentence and for bail.

2. Learned counsel for the applicants submits that the applicants are in jail since the date of their arrest i.e. from 30.8.2019. Learned counsel submits that as per the evidence of PW-2 Asha, who is wife of the deceased, the incident had taken place without any premeditation, as of sudden. The deceased had returned to the house and demanded the food. However, PW-2 Asha had requested him to wait. The deceased started abusing his wife PW-2 Asha. The applicants are residing in the same locality. They have allegedly extended the beating to the deceased with fist and kick blows. Learned counsel submits that though the incident had taken place on 25.8.2019, the deceased died on 29.8.2019 when the deceased had returned to his house after taking the medical treatment. Learned counsel submits that, in the given set of allegations, it is difficult to infer murderous intention on the part of applicants. Learned counsel for the applicants by

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referring the evidence of PW-8 Dr. Kirti Ruikar, who has prepared the histopathological report submits that, PW-8 Dr. Kirti has given certain admissions in her cross-examination, which has not considered by the trial court. She has stated that the death is occurred due to acute peritonitis and said acute peritonitis might have been caused due to bacterial infection. Learned counsel submits that the applicants may be released on bail.

3. The learned APP has strongly resisted the application on the ground that there are eye witnesses to the incident including PW-2 Asha, who is wife of the deceased. The learned APP submits that all the applicants have extended the beating to the deceased by giving fist and kick blows on his abdomen. The learned APP submits that, PW-6 Dr. Ramesh Gadhari has opined that internal injuries are mentioned in column no.20 and 21 are possible if the person assaulted by means of fist and kick blows. The learned APP submits that, even though during external examination, no injuries on the person of the deceased were found,

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however, on internal examination fractured injury found sustained over left 5th and 6th intercostal spaces in midclavicular line of size 5 x 4 cm. Upon internal examination of abdomen, Dr. Ramesh found perforation over jejunum having size 1cm x 0.5cm alongwith yellowish pus pockets over coils of intestine. The learned APP submits that, the applicants herein have ruthlessly extended the beating to the deceased on his abdomen by kick blows and in consequence of the same, the deceased died. There is a clear-cut murderous intention on the part of the applicants. The applicants may not be released on bail. They were not on bail during the trial.

4. We have carefully gone through the allegations made in the complaint and the evidence of the prosecution witnesses. It appears that the incident had taken place without any premeditation as of sudden. It further appears that, when deceased started giving abuses to his wife PW-2 Asha, the applicants, who are also residing in the same locality intervened in the

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matter and extended the beating to the deceased by fist and kick blows. They were not armed with the weapon. It further appears from the evidence of the prosecution witnesses that the incident had taken place on a trifling reason. There is no apparent enmity between the applicants and deceased. Though, there is a reference in the FIR exh.18 about previous enmity, however, PW-2 Asha has not stated anything about previous dispute between them. In the given set of allegations, prima facie, it is difficult to infer the murderous intention on the part of the applicants. Furthermore, PW-8 Dr. Kirti, who has prepared histopathological report has given certain admissions, which according to us, the trial Court has not considered in its proper perspective. PW-8 Dr. Kirti has accepted the possibility of bacterial infection as cause of death. In view of the same, homicidal death itself is in question. In view of the same and considering the entire aspect of the case, we are inclined to release the applicants on bail. Hence, we proceed to pass the following order.

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ORDER

- i. Criminal application is hereby allowed.
- ii. Pending the Criminal Appeal no.162 of 2022, the substantive part of the sentence passed by the learned Additional Sessions Judge, Dhule on 4.2.2022 in Sessions Case No.257 of 2019 is hereby suspended till the disposal of the Criminal Appeal No.162 of 2022 and till then the applicants no.1] Pandu Hiranman Malche, 2]-Subhash Pandu Malche and no.3]-Dnyaneshwar Pandu Malche be released on bail on furnishing P.B. of Rs.15,000/- (Rs. Fifteen Thousand) each, with one surety each of the like amount. Bail before the lower court.
- iii. Criminal application accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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