

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.467 OF 2022

1. Ramrao Babarao Wadje
2. Lingoji Babarao Wadje ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. A. M. Gaikwad, Advocate for applicants.

Mr. V. S. Badakh, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 13.04.2022

Pronounced on : 06.05.2022

ORDER :-

1. The applicants have been arrested on 19.05.2021 and 24.05.2021 respectively in connection with Crime No.92 of 2021 registered with Naigaon Police Station, Dist. Nanded for the offences punishable under Sections 302, 307, 324, 323, 143, 147, 148, 506 of Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. M. Gaikwad for the applicant and learned APP Mr. V. S. Badakh for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. If the contents of the FIR as

well as the material in the charge-sheet is considered, offence under Section 302 of the Indian Penal Code cannot be said to have been made out. The incident has occurred in a sudden fight and there was no common object or intention on the part of the applicants to kill deceased Nagnath. There is previous enmity between the accused persons and the family of the informant. There is inordinate delay also in lodging the FIR which has not been explained at all. The investigation is complete and charge-sheet has been filed. Therefore, physical custody of the applicants is not required. The applicants are having roots in the society and, therefore, they deserve to be released on bail. They are ready to abide by the terms of the bail.

4. Per contra, the learned APP submitted that there is ample evidence against the applicants. Applicants are the only persons, who had caused injury to the deceased by giving blow of sticks on his head. Definitely, it was with an intention to kill because immediately after the blow, Nagnath vomited at the spot and became unconscious. The cruelty on the part of applicants can be seen that when Nagnath's father went to rescue Nagnath, the old man has also been assaulted by applicant – Lingoji by stick. The father had received injury to left knee, left wrist, back and head. He also fell down due to the injuries and blood started oozing from his injury to the leg. Statements of eye

witnesses support the prosecution story. The applicants and informant are related to each other distantly and also their lands are adjacent to each other. Under such circumstance, the possibility of similar crime or any serious crime cannot be ruled out. They are also having motor on the Well at one place. They are required to go to start the motor for watering their lands. Therefore, the applicants do not deserve any sympathy.

5. It is to be noted that the investigation is complete and charge-sheet has been filed, therefore, custodial interrogation of the applicants is not required for the purpose of investigation. It is now required to be seen as to what is there against the applicants in the charge-sheet.

6. FIR shows that it has been lodged by one Sandip Digambar Wadje on 18.05.2021 in respect of an incident that had allegedly taken place at about 12.00 noon on 17.05.2021. At this stage, when it is a death case, we cannot directly jump to the conclusion that there is inordinate delay. Definitely, the focus of the family would be to give medical aid. The informant states that his father is holding 4 Acres of land, out of that 20 Gunthas have been encroached by one Madhav Wadje, who is accused No.1 and further 20 Gunthas are encroached by Shesherao Vyankoba Wadje. They are having dispute about the same with informant's family

and those persons, who had encroached upon, are not ready to return the land. Therefore, it was decided in presence of panchas that the disputed land should be got measured. Accordingly, Digambar has filed an application with Taluka Inspector of Land Records, Naigaon. Informant then states that for watering the field, there were two DP's. One is from Naigaon taluka and another from Kandhar taluka. As the DP from Kandhar taluka is not working, they were taking electricity from Naigaon DP. He states that there is motor fixed at canal belonging to them as well as there is motor belonging to Madhav adjacent to them. At about 10.00 a.m., he along with his brother and father had gone to field on 17.05.2021. Informant was proceeding to start the electric pump for watering the crop in his land at about 12.00 p.m. He found seven accused persons near the well of accused No.1 and they called him. He ignored the same, but all of them went towards him running armed with sticks and lathi's. They started altercation with the informant and then one Prakash Wadje and one Subhash Wadje assaulted informant on his left wrist, back and right buttock. He received covert injury, but then his father and brother came towards him to rescue him. At that time, the present applicants by abusing deceased Nagnath gave blow of sticks on his head. After receiving the blow, Nagnath vomited and fell down on the ground becoming unconscious.

When father went to pick him up, at that time, applicants assaulted the father also with sticks. All the other abused him, but when the voice is raised, people started gathering and assailants fled away. According to the informant, all the three of them i.e. injured persons were taken to Naigaon Government Hospital and then they were referred to Nanded Civil Hospital. Nagnath was still unconscious and, therefore, when the FIR was lodged, it was under Section 307 of Indian Penal Code.

7. It appears that Nagnath expired on 19.05.2021 and thereafter the inquest panchanama and postmortem have been done. The postmortem report shows that he had sustained following injuries :-

“(i) Contusion with swelling present over left front temporal region in an area of size 10cm x 7cm on dissection red in colour.

(ii) Abraded contusion present over dorsum of right hand and wrist of size 7cm x 4cm bluish red in colour.

(iii) Abrasion present over right elbow, medial aspect of size 1cm x 1cm red.

(iv) Contusion present over palmor aspect, base of left index finger at size 1cm x 1cm bluish red in colour.

(v) Graze abrasion present over extensar aspect of left arm just above elbow joint of size 1cm x 0.5cm directed upward medically red.

(vi) Abrasion present on left scapular region lower part of size 4cm x 1.5cm red.

(vii) Graze abrasion present over neck, posterior aspect in midline over 7th cervical vertebra of size 1.7cm x 1cm, directed downward laterally, towards rightside, red.”

There are corresponding internal injuries and all are stated to be antemortem. Though viscera has been preserved and sent for analysis, opinion as to the cause of death has been given as head injury. Therefore, it is very much clear that the death of Nagnath was homicidal in nature. Out of the surface injuries noted in column No.17, there is only one injury which is stated to be on the head and as per the FIR as well as the statement of witnesses especially the father, both the present applicants had given blow of sticks on the head of deceased Nagnath. In fact, the contents of the FIR and the statements of witnesses would show that they intended to say that only one blow was given by both the applicants and there is absolutely no mention that the applicants had caused injury to any other part of the body of deceased. Even as regards the other accused persons are concerned, the contents of the FIR as well as statements of witnesses give an impression that the co-accused had not even touched deceased Nagnath. Then how there can be seven injuries on the body of deceased is a question. If it is a case of single blow, then whether there was intention to kill is also the important

factor. Definitely, the motive or intention always burried in the heart of accused, yet the inference will have to be drawn on the basis of circumstances.

8. The injury certificate of the informant would show that he had not sustained either abrasion, contusion or swelling. It means it was the case of no injury at all and in the FIR itself, he has stated that it was the covert injury. The father has sustained only one abrasion that was just below the left knee joint and no other injury has been mentioned. Therefore, the medical evidence appears to be somewhat contrary to ocular evidence.

9. The weapons allegedly used in the commission of crime have been seized and, therefore, when the investigation is complete and with the abovesaid evidence, the applicants need not be asked to remain in jail. It will take long time to stand the trial. The only apprehension in the mind of the prosecution about the safety of witnesses is concerned can be taken care of. With the abovesaid reasons, following order is passed :-

ORDER

- I) Application stands allowed.
- II) Applicants viz., Ramrao Babarao Wadje and Lingoji Babarao Wadje, who have been arrested in connection with Crime No.92 of

2021 registered with Naigaon Police Station, Dist. Nanded for the offences punishable under Sections 302, 307, 324, 323, 143, 147, 148, 506 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

III) The applicants shall not reside or visit village Tembhurni, Tq. Naigaon (Kh.), Dist. Nanded till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile numbers to the learned Additional Sessions Judge, Biloli as well as to the Investigation Officer.

IV) The applicants shall not tamper with the evidence of the prosecution in any manner.

V) They shall not indulge in any criminal activity.

VI) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm