

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.603 OF 2022

MAHESH BALAJI SALUNKE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent : Mr. V. S. Badakh
...

WITH BA/458/2022

MANKESHWAR @ ROHIT S/O. LAXMAN PANCHAL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. P. P. More
APP for Respondent : Mr. V. S. Badakh
...

CORAM : S. G. MEHARE, J.

DATE : 24-06-2022

PER COURT :-

Heard the learned counsel for the applicants and the learned APP for the respondent/State.

2. The argument advanced by the learned counsel for the applicant is that the deceased was considered one of the co-accused Kalpana, his wife. He was not allowing anybody to talk to her. The deceased was roaming nearby the house of Kalpana, the sister of applicant Mahesh. The deceased was asking the people why they talked to Kalpana. The deceased was married. Hence, on

the date of the incident at 4.30 p.m., the applicants tried to convince and explain to the deceased, that he should not consider kalpana his wife. There was a quarrel between the accused and the deceased. As per the arguments, in the evening, the deceased was called to the parking place in one park to settle the dispute and give him an understanding not to follow Kalpana. In response thereto, the deceased came there to settle the dispute. the statements of one witness Mahalappa reveal that the applicant Mahesh Balaji Salunke asked the deceased to apologize to Kalpana and also asked why he unnecessarily defamed Kalpana. However, the deceased flatly denied seeking an apology; therefore, hot words were exchanged, and the incident happened in the spur of the moment. Both the learned counsel for the applicants would further submit that there was a single blow and the deceased died after a long period. There was no intention to murder the deceased. But, they were only trying to free Kalpana from the torment of the deceased, who was torturing her by considering her his wife. Both the applicants are young. Applicant Mankeshwar @ Rohit Panchal is a student in his First Year. There are no antecedents to their discredit. The incident happened without any intention. The applicants also have sympathy for the death of the deceased, but the arguments are that the deceased himself was an instrumental for his death. Mr. More, the learned counsel for the applicant Panchal referring to the postmortem report, would argue

that the death is not the direct result of injury but was caused due to the complication during the treatment of his head injury. He has tried to convince the Court that the applicants are not responsible for the cause of death. This Court is not convinced with his arguments. The overall arguments of both the learned counsel are that the situation speaks for the incident. It was the deceased who was unnecessarily following Kalpana and was considering her his wife and harassing her. He was not ready to listen and forget her. The applicants have been languishing in jail since August 2021. They have cooperated with the investigating machinery. They would abide by the conditions if enlarged on bail.

3. Per contra, learned A.P.P. for the respondent/State would submit that both the applicants have assaulted with a deadly weapon on the head of the deceased, which caused his death. The applicants called the deceased for settlement, but they suddenly assaulted the deceased on his head. There are eyewitnesses to the incident. The deceased was unconscious from the date of the incident till his death. Therefore, there is no delay in lodging the first information report. The applicants have committed a grievous offence. Hence, they may not be released on bail.

4. So far as the fact that the deceased was considering Kalpana his wife and not allowing anybody to talk with her is not disputed by the prosecution. It appears that the applicants tried to convince

the deceased not to consider Kalpana as his wife, and he should stop to defame her. It is admitted that the deceased was married, and Kalpana is unmarried. The conduct of the deceased was unsuitable to the social structure. He was under the illusion that she was his wife. An attempt was made to dispel his illusion. Hence, he was called. The applicants tried to convince him and asked him to seek an apology from Kalpana and end the matter, but he flatly denied it. This goes to show the irrational mindset of the deceased considering a lady his wife without her consent. Such behaviour is intolerable for a brother. The evidence collected by the Investigating Officer reveals that before the incident, the applicant Mahesh asked the deceased to seek an apology from his sister Kalpana, but he abruptly denied it, and then the incident happened. *Prima facie*, it appears that the incident occurred in peculiar circumstances, and that may be in the spur of the moment. This circumstance may be considered while considering the bail application. Besides this, the investigation is over. Both the applicants have no antecedents to their discredit. They have cooperated with Investigation Officer. The charge sheet is also filed. No doubt, the offence is serious. But the facts permit this Court to exercise its discretion. To guard the interest of the prosecution, stringent conditions can be imposed.

5. Hence, the following order -

i) Both the applications are allowed.

- ii) The applicants (i) Mahesh Balaji Salunke and (ii) Mankeshwar @ Rohit s/o. Laxman Panchal, be released on bail, on furnishing P.B. and S.B. of Rs.20,000/- each with one or more solvent sureties of the like amount, in C.R.No. 0281 of 2021, registered with AUSA Police Station, District Latur, on the condition that they shall not enter the place of their residence for one month from today. They shall not tamper with the prosecution's evidence. They shall attend the trial at each material hearing. They shall not indulge in such type of offence.
- iii) Hamdust allowed.

**(S. G. MEHARE)
JUDGE**

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