

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

908 ANTICIPATORY BAIL APPLICATION NO.747 OF 2022

1. Akshya Balbhim Gaikwad
2. Rutik Babu Jadhav
3. Vilas Zumbar Gaikwad
4. Sameer Abdulraheman Kazi ..Applicants

Versus

The State of Maharashtra .. Respondent

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Advocate for Applicants : Mr. P.B. Shirsath
APP for Respondent – State : Mr. A.A. Jagatkar
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**CORAM : S. G. MEHARE, J.
DATE : JULY 13, 2022**

PER COURT :

1. Heard the learned Counsel for the applicants and the learned APP.
2. A report has been lodged against the applicants by the brother of the deceased on 27.05.2022 regarding the incident dated 22.05.2022. It has been alleged that all the accused mercilessly beat the deceased with sticks and kick blows. Next day of the incident, the first informant again met the deceased and noticed that the deceased was unable to walk and he has the injuries on his person. The report is lodged after the death of the deceased. Till lodging the report the police

were not intimated about the incident. The offence under Sections 302, 143, 147, 148, 149 and 504 of IPC has been registered against the applicants.

3. The learned Counsel for the applicants would submit that no incident as such happened. One of the applicant Sameer Kazi was not present in the village on 22.05.2022. He went to attend the marriage of his close relation at Pune. He would refer to the observations recorded by the learned Sessions Judge in regular bail application of co-accused Bapu Baba Mane and point out that the complainant, the wife of the deceased as well as six witnesses have filed affidavits contending that no incident as such happened. The sole eye witness Vikas also did not support the prosecution and he has filed the affidavit. The learned Counsel had also pointed out that the queries sent to the Medical Officer by the Investigating Officer have been answered that the injuries sustained to the deceased were not possible by the alleged weapon used in the crime. The sole eye witness has turned from his earlier statement. Neither direct or circumstantial evidence is against the applicants. The applicants are the young boys having no antecedents to their discredit. They are ready to co-operate with the investigation. Hence interim protection may be granted to the applicants.

4. The learned APP has strongly opposed the application and submitted that the applicants have win over the complainant and eye witnesses by offering them money. The financial condition of the deceased and his family is poor. Therefore, possibility of pressurizing them at the hands of the applicants cannot be ruled out. The learned APP also pointed out that the wife was residing separate from the deceased and she has also filed an affidavit supporting the applicants. The affidavit is apparently managed who saved them from a serious crime of committing murder. He also argued that the FIR was very clear that after the incident the deceased disclosed the names of the accused and the incident in detail, to the first informant. The inquest panchanama also corroborates injuries suffered by the deceased. The medical injury report also supports the prosecution case. It has been specifically alleged that applicant Sameer beat the deceased with kick blows on the chest of the deceased and that was the cause of his death. The offence is serious. The weapons are to be recovered. Hence the application may be rejected.

5. No doubt, the allegations levelled against the applicants are serious. As per the FIR the incident of beating deceased happened on 22.05.2022. That day no report was lodged. The brother of the

deceased, who has lodged the report, met the deceased on the next day, at that time he noticed that the deceased was unable to walk. A Medical Report and the Injury Report as pointed out by the learned APP reveal that the deceased had injury on buttock and he had complaints of inability to walk. However, the said documents further reveal that without consent of the doctor and at the risk of the deceased he took discharge and went home. The cause of death was due to pulmonary edema. First question raised by the learned Counsel for the applicants is that the cause of death is not due to the act of the applicants and so called injury was not possible due to the alleged weapons used in the crime. The prosecution has no evidence that beating with fists and kick blows on the chest has caused death of the deceased. Whether the witnesses are win over or not is a matter of further investigation. At this juncture, it cannot be accepted that the witnesses have been win over. Hence they have voluntarily filed their affidavits stating that no incident as such happened and out of misunderstanding the report was lodged against the applicants. At this juncture, it may be stated that the prosecution has no evidence showing that the death was caused due to the acts of the applicants. Even the sole eye witnesses have also not supported the prosecution. Barely filing an affidavit may not discharge the applicants, but that can be considered for the purpose of bail. In

view of the aforesaid facts, this Court is of the view that the prosecution has a weak case for custodial interrogation. Hence, the application deserves to be allowed. Hence, the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of the arrest, the applicants namely Akshya Balbhim Gaikwad, Rutik Babu Jadhav, Vilas Zumbar Gaikwad, Sameer Abdulraheman Kazi be released on bail in Crime No.364 of 2022, registered with Shrigonda Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 143, 147, 148, 149, 504 of the Indian Penal Code, on furnishing P.B. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) each, with one solvent surety of the like amount each, on the following conditions :

- (a) The applicants shall not tamper with the prosecution witnesses.
- (b) The applicants shall cooperate with the Investigating Officer.
- (c) The applicants shall attend the concerned police station on 18.07.2022, 19.07.2022 and 20.07.2022 between 10:00 a.m. to 01:00 p.m.

[S. G. MEHARE]
JUDGE