

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

BAIL APPLICATION NO.1419 OF 2022

Rajesh @ Rajebhau s/o. Subhashrao Bobade ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.Rajendrreaa Deshmukkh, Senior Advocate i/b. Mr.V.A.Chavan and
Mr.D.R.Deshmukh, Advocates for applicant

Mr.V.S.Badakh, APP for respondent

AND

BAIL APPLICATION NO.1412 OF 2022

Prakash s/o. Prabhakar Dongare ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.N.S.Ghanekar, Advocate for applicant
Mr.V.S.Badakh, APP for respondent

AND

BAIL APPLICATION NO.1052 OF 2022

1. Sarjerao s/o. Vishwanathrao Shinde,
2. Bhagwat s/o. Prakashrao Shinde,
3. Sandeep s/o. Laxmanrao Shinde ..Applicants
Vs.
The State of Maharashtra ..Respondent

Mr.M.V.Salunke, Advocate for applicants
Mr.V.S.Badakh, APP for respondent, assisted by Mr.S.R.Bagal, Advocate
h/f. Mr.B.N.Gadegaonkar, Advocate for informant/intervenor

CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 12, 2022

ORDER :-

Leave to amend granted so as to correct the name of applicant in Bail Application No.1419 of 2022.

2. All these applications for bail under Section 439 of the Code of Criminal Procedure are arising out of the same crime and therefore, are taken up together. The applicants have been arrested in connection with Crime No.0119 of 2022 registered with Gangakhed Police Station, Dist.Parbhani, for the offences punishable under Sections 302, 143, 147, 148, 188 read with Section 149 of Indian Penal Code.

3. Heard learned counsel appearing for the parties.

4. The First Information Report (FIR) has been lodged by one Shrawan Shinde on 29.03.2022. It is alleged that one of the applicants, namely, Prakash has taken a sand spot in auction. Said sand spot was by the side of village Dhanewadi. Applicant – Prakash and his associates would excavate sand and transport it during night time. The same is not permissible in view of the rules and terms of the contract as well. The mother of the deceased -

Madhav is a member of the Village Panchayat. Madhav was opposed to excavation of sand during night time. The relation between the deceased - Madhav and the applicant - Prakash had, therefore, turned sour. The informant claimed to have had seen the co-accused - Suresh and Omprakash proceeding on a motorbike at 10.30 p.m. on 24.03.2022. It is also his case that the deceased - Madhav sat at the middle of both of them on the very motorbike. As such, according to the prosecution, the deceased was last seen in the company of co-accused - Suresh and Omprakash, who are not before the Court.

5. It is also the contention of the informant that he had seen the applicant - Prakash and his associates (co-accused including the applicants herein) in the riverbed. When the sand excavation was undertaken, the informant claimed to have had overheard talks between the applicant - Prakash, applicant - Rajesh @ Rajebhau and others. According to him, the deceased was asking them to stop excavation of sand. The applicant - Prakash responded saying that he has invested a huge amount. The applicant - Prakash abused the deceased and assaulted on his legs by iron rod. The applicant - Rajesh @ Rajebhau is also alleged to have assaulted

the deceased similar way with similar weapon. The applicant - Bhagwat is alleged to have assaulted the deceased on his legs with stone. The applicant - Sandeep, allegedly, beat up the deceased with stick. Since the deceased suffered multiple injuries and became unconscious, he was rushed first to Aadhar Hospital, Nanded. He breathed his last on the following day.

6. Learned counsel for the applicants would submit that there is delay of five days in lodging of the FIR. All the applicants and the co-accused have been falsely implicated. When the relatives of the deceased were informed by the informant soon after he had seen the incident, the relatives of the deceased ought to have come forward to lodge the report. Since same has not been done, it is doubtful, whether the informant had really witnessed the incident. According to them, there is no other eye witness. The applicants herein are not alleged to have been seen last taking the deceased with them. Those allegations are against co-accused - Suresh and Omprakash. According to them, the applicants herein have been behind the bars for little over six months. The charge sheet has been filed. They, therefore, urged for allowing the applications.

7. Learned APP and learned counsel for the informant/intervenor would, on the other hand, submit that it is a serious offence. An innocent person, who was opposed to illegal activities of the applicants and the co-accused, has been murdered brutally. The applicants are sand mafias. There is their terror in the village and therefore, no one could come forward to lodge report of the incident. Learned counsel, therefore, urged for rejection of the applications.

8. Considered the submissions advanced. Perused the FIR and the related papers.

9. There is delay of five days in lodging of the FIR by the informant, who claimed to have witnessed the incident. It is his case that soon after the assault, he had approached the relatives of the deceased. None of the relatives of the deceased has made any police report. The informant had even attended funeral of the deceased. Learned counsel for the applicants have reason to contend that the applicants have been falsely branded as mafias since, admittedly, none of them had criminal antecedents.

10. In view of this Court, learned counsel for the applicants are justified in contending that it is doubtful that the informant had really witnessed the incident. This Court is in agreement with them. Since there is delay of five days in lodging of the FIR, this Court is inclined to grant the applicants bail.

11. The observations made in this order are prima facie in nature. The trial Court shall not be influenced thereby.

12. Hence, the following order:-

(i) The applications are allowed.

(ii) The applicants be released on bail in connection with Crime No.0119 of 2022 registered with Gangakhed Police Station, Dist.Parbhani, for the offences punishable under Sections 302, 143, 147, 148, 188 read with Section 149 of Indian Penal Code, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(iii) The applicants shall not tamper with the prosecution evidence.

(iv) They shall not enter Taluka Palam, District Parbhani, for next twelve months.

[R.G. AVACHAT, J.]

KBP