

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

BAIL APPLICATION NO.1164 OF 2021

1. Omkar S/o Popat Madke
  2. Abhilash s/o Vishwas Madke
- Applicants
- Versus

The State of Maharashtra

Respondent

Mr. M.R Jadhav, Advocate for the applicants.  
Mr. V.S. Badakh, APP for respondent/State.

**CORAM : M.G. Sewlikar, J.**

**DATE : 11<sup>th</sup> FEBRUARY, 2022.**

PER COURT :

1. Heard.
2. Deceased Saurabh was the cousin of the informant. The deceased had taken amount of Rs.50,000/- as hand loan from one Popat Sahebrao Madke. There was some altercation between the deceased and Popat Madke on account of refund of the said amount. This dispute was settled by the villagers.
3. On 22<sup>nd</sup> April, 2021 at 3.45 am, informant heard screams

of the deceased. Therefore, the informant wake up and went to the deceased. He saw that accused Popat Madke, applicants Abhilash Madke and Omkar Madke were abusing the deceased. He noticed that accused Popat Madke was armed with an axe. On the count of non-refund of money taken as hand loan, accused Popat Madke delivered a blow of axe from blunt side on the left ear, chest and right hand of the deceased. Applicants No. 1 and 2 delivered blows of stick on the legs of the deceased. When informant went to rescue the deceased, applicants No. 1 and 2 held him and beat him with kicks and fists blows. On hearing the screams, one Mangesh Madke, the adjoining field owner, came there. The deceased was shifted to the hospital. He was first shifted to Government Hospital and from there, he was shifted to Pacific Hospital. The deceased died on 11<sup>th</sup> May, 2021. On these allegations, First Information Report came to be registered against the applicants under Sections 302, 326, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code vide Crime No. 0198/2021 registered with Shevgaon Police Station, Dist. Ahmednagar.

4. Heard Shri Jadhav, learned counsel for the applicants and Shri Badakh, learned APP for the State.

5. Learned counsel Shri Jadhav submits that the role attributed to the applicants is delivering blows on the shin of the deceased. The fatal blow is attributed to accused Popat Madke. He further submits that there is inconsistency between the Medical Certificate and the PM report. He submits that it is mentioned in the Medical Certificate that the deceased had cerebral edema whereas no such injury is mentioned in the PM report. He further submits that in the supplementary statement of informant, it has come that the cause of assault was failure to repay the amount of hand loan taken by the deceased and also that the deceased harassed the daughter of accused Popat. He submits that considering the role of the applicants, they be released on bail.

6. Learned APP Shri Badakh submits that the cause of death is cerebral edema due to head injury, leading to post traumatic complication of pulmonary edema, pneumonia and bedsores. He further submits that the offence is serious in nature. The deceased was assaulted by applicants on his legs. The deceased was also assaulted by accused Popat on chest and head. Therefore, it shows that the applicants also shared common intention with accused

Popat.

7. Charge-sheet is filed. On perusal of the charge-sheet, it is seen that the role attributed to the applicants is giving blows on the shin of the deceased. The fatal blow is given by accused Popat Madke. In the case of Prashant Singh Rajput vs. State of Madhya Pradesh, **AIR 2021 Supreme Court 5004**, the Honourable Supreme Court has held that the role of the accused in the commission of offence is also one of the considerations for bail. In this case, the role of the applicants is that of delivering blow on shin of the deceased. Applicants do not have any criminal antecedent. They are not likely to flee from justice. In this view of the matter, I am inclined to release the applicants on bail. Hence the following order :-

**ORDER**

- i) Application is allowed.
- ii) Each of the applicants be released on PR Bond of Rs.25,000/- each (Rs. Twenty Five each) with one solvent surety each in the like amount in connection with Crime No. 0198/2021 registered with Shevgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 326, 324, 323,

504, 506 read with Section 34 of the Indian Penal Code, on condition that they shall not enter the village till the conclusion of the trial.

iii) Application stands disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

( M. G. SEWLIKAR )  
Judge

dyb