

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

**BAIL APPLICATION NO.1689 OF 2022
WITH APPLN/3792/2022 IN BA/1689/2022**

1. Jalindhar Goroba Jawle
2. Ashok Jalindhar Jawle ...Applicants

VERSUS

The State of Maharashtra
...Respondent

...

Mr. V.D. Salunke, Senior Advocate i/b Mr. Dhananjay .M. Shinde,
Advocate for the applicants.

Mr. S.B. Narwade, APP for the respondent-State.

Ms. Laxmi R. Thakur, Advocate for the complainant.

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CORAM : S.G. MEHARE, J.

DATED : 17th NOVEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicants, learned APP for the State and learned counsel for the complainant.
2. Learned counsel for the applicants would argue that the statements of the witnesses reveal that the deceased and the complainant were aggressive. They brought the tractor in the field of the applicants. When they were obstructed, they left the place and again came on the spot. The deceased came with sickle in his hands. He would also argue that the labourers who were working in the field have narrated the correct picture. They did not state that the applicants have used the weapon like knife. However, there was

stone pelting and beating each other. The incident happened on 05.05.2022. After the incident, the deceased went to the hospital. He took the treatment there. He was discharged and again admitted to the private hospital. After around 13 days from the incident, the deceased died. The so-called injuries received on the head is not the cause of death. As per the post-mortem report, the death is caused due to septicemia along with peritonitis. He would also refer to the post-mortem report and point out that there was puncture to the abdomen and hence, septicemia was developed. In nutshell, he would argue that the death was not caused due to the acts of the applicants. The report is also delayed by around 12 days. Till that date, there were no allegations of committing the murder of the deceased. But soon after he died, a false story has been cooked. The applicants have been arrested in the crime. The allegations levelled against the applicants appear false from the prosecution case itself. The applicants are the bread winners of their families. The charge sheet has been filed. Nothing is to be recovered from the applicants. Considering the entire circumstances of the case and aggression of the deceased, the applicants may be released on bail.

3. Learned APP has strongly opposed the application contending that the death was caused due to the acts of the applicants. They have mercilessly beaten the deceased with fist and blows on his abdomen therefore, puncture wound was caused to his

abdomen. There was a dispute between the accused and the deceased for land. It was legally resolved, but the applicants were not listening. The injuries suffered to the deceased are supported with the medical evidence. The offence is serious. There may be a possibility of tampering with the prosecution witness. Hence, they may not be released on bail.

4. Learned counsel appearing for the complainant has vehemently argued that there are eye witnesses to the incident. The deceased was mercilessly beaten with kicks and blows that caused the internal injury to the abdomen. The blood was clotted and hence, septicemia was developed. There were neighbourers who have separated the dispute and saved the life of the deceased. She would also argue that the applicants were aggressive. They may pressurize the witnesses. Relying on the case of Satish Jaggi Vs. State of Chattisgarh and others (Criminal Appeal No.651 of 2007 (Arising out of SLP (Cri.) No.3517 of 2006) decided on 30.04.2007, she would argue that while considering the bail application, the court can only go into question of prima facie case and cannot scrutinize evidence at stage of granting bail. The credibility and reliability of the witnesses cannot be gone into and if it has been done, it is bad in law.

5. Perused the charge sheet. It prima facie reveals from the charge sheet that the incident happened in the field. The labourers were working in the fields of the applicants, at that time, the deceased

and the complainant came on the spot with tractor. The applicant Jalindhar obstructed them, as it was causing damage to his field. Thereafter again, the deceased came on the spot with hunter and sickle and then both the parties fought. They have pelted stones; however, none of the eye witnesses stated that the knife was used in the assault. Though there were fist and blows to both the groups, it appears from the record that the deceased had no immediate complaint of abdominal pain. After his discharge from the hospital, he got some pain in his stomach; hence, he was admitted to the hospital and that time, it was revealed that his abdomen was punctured. Whether the death of the deceased was a direct result of the fist and blows to abdomen is a matter of evidence. However, it may be factor before this Court for consideration of the bail. Who was aggressive is also one of the factor to be considered prima facie. Whether the puncture wounds to the abdomen were caused only due to the acts of the applicants and delay of 12 days in lodging the report can very well be considered by this Court. It seems that there was a free fight between two groups. The deceased and the complainant were again went on the spot of incident along with the weapons. Considering the overall facts and the completion of the investigation, the Court is of the view that it would be inappropriate to keep the applicants behind the bar; however, certain stringent conditions may be imposed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicants, Jalindhar Goroba Jawle and Ashok Jalindhar Jawle, be released on bail on executing P.B. and S.B. of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount in connection with Crime No.121/2022, registered at Dhoki Police Station, District Osmanabad for the offence punishable under Sections 302, 326, 323, 504, on the condition that;
 - (a) The applicants shall not tamper with the prosecution witnesses.
 - (b) They should maintain peace, law and order in the village.
 - (c) They shall not go to the field where the dispute arose alone except with any other third party from the village.
- (iii) Criminal Application No.3792 of 2022 is allowed.

(S.G. MEHARE, J.)