

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

21 BAIL APPLICATION NO. 1450 OF 2021

1. Arvind s/o Namdev Gaikwad,
Age : 50 years, Occu : Labour,
 2. Sandesh @ Shashikant s/o Arvind Gaikwad,
Age : 20 years, Occu : Education,
Both R/o. Bamni,
Tq. Nilanga, Dist. Latur.
- ... APPLICANTS
(Orig. Accused No. 5 & 6)

VERSUS

The State of Maharashtra ... RESPONDENT

Shri. V. B. Dhage, Advocate for the applicants
Smt. R. P. Gour, APP for the respondent/State

WITH BAIL APPLICATION NO. 1429 OF 2021

Bapu @ Vijay s/o Narayan Dhale,
Age : 20 years, Occ. Education
R/o. Bamani,
Tq. Nilanga, Dist. Latur.

... APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra
Through Police Station Officer,
Nilanga Police Station,
Tq. Nilanga, Dist. Latur.

... RESPONDENT

Shri. P. P. More, Advocate for the applicant
Smt. R. P. Gour, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.
DATED : 17th January, 2022

PER COURT :-

1. Both these applications are being disposed of by common order as they arise out of the same crime.

2. Case of the prosecution is that all the three applicants and the deceased were not on good terms. The deceased was the brother of the informant. It is further alleged in the FIR that at 8.00 p.m. on 19th February, 2021 deceased was called out by Ram Gaikwad. Therefore, deceased went out. He was followed by informant and her parents. Applicants Bapu Dhale, Arvind Gaikwad and Shashikant Gaikwad alongwith other accused were there. They assaulted the informant. Accused Ram slapped the deceased. Applicant Bapu delivered a blow of stick on the head of the deceased and also pelted stones which hit the neck of the deceased. Accused Malhari Gaikwad assaulted the deceased on his head. The deceased was shifted to the hospital at Nilanga. A while later the deceased was declared dead. On these allegations an FIR was lodged on the basis of

which Crime No. 55 of 2021 was registered under Sections 302, 143, 147, 148, 149, 323, 324, 504, 506, 336 of the Indian Penal Code and under Section 135 of Maharashtra Police Act with Nilanga Police Station, District Latur.

3. When this Court expressed its disinclination to grant any relief to the applicant Bapu @ Vijay s/o Narayan Dhale (Bail Application No. 1429 of 2021) learned counsel Shri. More sought permission to withdraw the application with liberty to move the concerned Court for regular bail if trial does not get concluded within a specified period.

4. Learned counsel Shri. Dhage for the applicants (Bail Application No. 1450 of 2021) submits that role of the applicants is not as serious as that of applicant Bapu Dhale. He further submits that all the other accused having similar role have been released on bail. He, therefore seeks release of the applicants Arvind s/o Namdev Gaikwad and Sandesh @ Shashikant s/o Arvind Gaikwad on parity.

5. Learned APP Smt. Gour for the respondent/State submits that applicants assaulted the informant and the daughter of the deceased. These two persons sustained injuries during the incident. She submits that offence is serious in nature and parity is not applicable.

6. Charge-sheet is filed. On perusal of the FIR and charge-sheet, it is seen that the death of the deceased occurred on account of head injury. Head injury is attributed to accused Bapu Dhale. Other applicants Arvind s/o Namdev Gaikwad and Sandesh @ Shashikant s/o Arvind Gaikwad are alleged to have assaulted the deceased with kicks and fist blows. However, there are no corresponding injuries indicating that the deceased had sustained injuries because of kicks and fist blows. Of course informant and the daughter of the deceased by the name of Sneha are alleged to have been assaulted by the applicants. However, the injuries are simple in nature. In view of this, applicants have no role to play in the death of the deceased. In view of the judgment of the Hon'ble Supreme Court in the case of

Prashant Singh Rajput V. State of Madhya Pradesh

reported in ***AIR 2021 Supreme Court 5004*** role of the accused is one of the considerations for releasing the applicants on bail. Applicants do not have criminal antecedents. They have fixed place of residence and therefore, they will be available for trial. Hence following order is passed.

ORDER

1. Bail Application No. 1450 of 2021 is allowed.
2. Each of the applicants (Bail Application No. 1450 of 2021) be released on bail on their furnishing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount in connection with CR No. 55 of 2021 offence under Sections 302, 143, 147, 148, 149, 323, 324, 504, 506, 336 of the Indian Penal Code and under Section 135 of Maharashtra Police Act registered with Nilanga Police Station, Dist. Latur, on condition that they shall not tamper the prosecution evidence.

3. Bail Application No. 1429 of 2021 is disposed of as withdrawn. Learned Trial Court to conclude the trial within a period of one year. If the trial does not get concluded within that period, the applicant is at liberty to move the concerned Court for regular bail. In that case the Trial Court shall decide the application on its own merits.

4. 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, J.]

ssp