

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

920 BAIL APPLICATION NO.1466 OF 2021

1. BHAUSHEB S/O KACHRU ADHAV
2. RAOSAHEB S/O BHAUSAHEB ADHAV
3. AMOL S/O BHAUSAHEB ADHAV
4. MANDABAI BHAUSAHEB ADHAV

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Ghanekar Nilesh S.
APP for Respondents/State : Mr. S.B. Narwade

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CORAM : M.G. SEWLIKAR, J.
DATE : 20th January, 2022

PC.:-

Heard.

2. Informant is the brother of the deceased. Deceased-Sambha was the husband of the sister of applicant no.1-Bhausahab. There was a marital discord between Sambha (since deceased) and his wife-Vandana. Applicant no.1-Bhausahab tried to effect reconciliation between them. Somehow it did not materialise.

3. On 22nd September, 2019 in the evening i.e. at 4.00 pm again quarrel ensued between applicant no.1-Bhausahab and Sambha on account of

maintaining Vandana. Applicant no.1 had threatened the deceased-Sambha of dire consequences if Sambha did not give divorce to Vandana. At about 6.00 pm applicant no.1-Bhausahab had taken Sambha on his motorcycle to his field. They were followed by applicant nos.2 to 4 and other accused. Sambha did not return till morning of next day i.e. 23rd September, 2019. He was told by one Khandu Shankar Alhat that there was a scuffle between Sambha and applicant no.1-Bhausahab, applicant nos.2 to 4 and other accused. He was also told that accused-Rahul was armed with an axe. Witness-Khandu Shankar Alhat got terrified and fled from the spot. Thereafter, informant went to the place i.e. at the field near canal. He found that deceased-Sambha was dead. Accordingly, he intimated the police station on the basis of which offence under Section 302, 143, 323, 147, 148, 149, 504, 506 read with Section 34 of the I.P.C. came to be registered vide Crime No.137/2019 with Veergaon Police Station, Aurangabad.

4. When this Court expressed its disinclination to grant any relief to applicant no.1, learned counsel Shri Ghanekar sought permission to withdraw application to the extent of the applicant no.1. Permission granted.

5. So far as applicant nos.2 to 4 are concerned, learned counsel Shri Ghanekar submits that there is no evidence against them to connect them with the offence. Statement of eye witness-Khandu Shankar Alhat shows that he

has attributed role only to applicant no.1-Bhausahab.

7. Learned APP Shri Narwade submits that applicant nos.2 to 4 were also present and they were armed with sticks. He further submits that applicant nos.2 to 4 were absconding since the date of crime. They surrendered before the Court after two years from the date of the incident. Applicants are, therefore, not entitled to be released on bail.

8. Charge-sheet is filed. So far as applicant nos.2 to 4 are concerned, eye witness-Khandu Shankar Alhat in his statement under Section 164 of the Cr.P.C. has not attributed any role to any of them. He has stated in statement under Section 164 of the Cr.P.C. that accused-Rahul was holding an axe. Applicant no.1-Bhausahab took the axe from accused-Rahul and delivered a blow of axe on the head of Sambha. Khandu Shankar Alhat is the only eye witness to the incident. Post mortem report shows that deceased had only one injury on head. Therefore, this corroborates the statement of Khandu Shankar Alhat that only one blow was given that too by applicant no.1-Bhausahab. Since there is no evidence against applicant nos.2 to 4, I am inclined to release them on bail. They do not have criminal antecedents. In this view of the matter, the following order is passed:

ORDER

- I) Application is allowed to the extent of applicant nos.2 to 4.
- II) Application is disposed of as withdrawn to the extent of applicant no.1.
- III) Applicant nos.2 to 4 be released on PR bond of Rs.15,000/- each with one solvent surety in the like amount each, in connection with Crime No.137 of 2019 under Section 302, 143, 323, 147, 148, 149, 504, 506 read with Section 34 of the I.P.C. with Veergaon Police Station, Aurangabad on condition that the shall not tamper the prosecution evidence.
- IV) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]