

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1839 OF 2022
WITH APPLN/3812/2022 IN BA/1839/2022

MANJUR KASHIM SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. R. G. Hange, Mr. A. R. Hange
APP for Respondent/State : Mr. A. a. Jagatkar
Advocate for complainant : Mr. A. S. Savale
...

CORAM : S. G. MEHARE, J.

DATE : 02-12-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.

2. The case has a checkered history of the dispute of possession over a field Survey No. 227 of village Parali-Vaijnath. One of the co-accused Shaikh Manjur s/o. Shaikh Mohmmad Kasim along with Shaikh Nizam s/o. Shaikh Mohammad had filed a civil suit against the family members of the present complainant for injunction prohibiting them from disturbing peaceful possession over the field survey No. 227 of village Kasbe Parali-Vaijnath, Taluka Parali Vaijnath, District Beed. The said suit was decreed in

favour of the accused family. The appeal preferred by the present informant was also dismissed in the year 2013. The Civil Court as well as appellate Court held the peaceful possession of the accused family. The incident happened in the same field. It has been alleged that all the accused entered in the said field. They had a quarrel and fighting. In that fighting, one of the family members of the complainant received injuries. However, he died due to "coronary artery disease and its complication". Since the deceased died, the crime has been registered against the applicants for the offence of murder and attempt to commit murder.

3. The learned counsel for the applicants would argue that the complainant and his family were continuously disturbing their possession though the decree was in their favour. They used to forcefully entered the field with intention to grab the possession on the part of the land. The complainant and his family has tried to create the record by filing false reports against them. They approached various authorities like, Tahsil and Waqf Board. Till this date, they have no title over the said field. The death is not result of the assault. They have been falsely implicated in the crime. They are languishing behind the bar since last October 2022. Nothing is to be recovered from them. Hence, they may be granted bail.

4. The learned A.P.P. for the respondent and the learned counsel for the complainant have opposed the application. They have advanced the arguments that the applicants/accused were aggressive. They were disturbing the possession of the complainant and their relatives. Preventive action was also taken against them. The suit before the Waqf Board is pending. The applicants are defaulter in paying the Waqf fund. The District Waqf Officer also wrote the letter to the District Collector. In sum and stance their arguments were that all the applicants were aggressive and they were taking the law in hands and lastly they have committed serious alleged crime. There are two eyewitnesses to the incident. Considering the gravity of the offence, the applicants may not be granted bail.

5. It seems that both the parties were fighting over the possession of the land Survey No. 227 of village Parali-Vaijnath. The decree was in favour of the applicants. Complainant's family was failed to prove their possession before the Civil Court. However, they have no explanation as how they come in possession over the part of the said land in the year 2005. The applicants were never evicted by following due procedure of law. From this fact it appears that neither the applicants nor the complainant were leaving single stone unturn. They keep fighting. The incident has been allegedly happened in the said field. The applicants were not the assailants. Only allegations against are

that they were present on the spot of the incident. The cause of death also does not appear the result of assault. Be that as it may, considering the role attributed to the applicants and the progress in the investigation, it would be inappropriate to keep the applicants behind bar. However, considering their past, stringent condition may be imposed. Hence, the following order :-

- i) The application is allowed.
- ii) Applicant Nos. (1) Manjur s/o. Kashim Shaikh, (2) Shaikh Mubin @ Kustar s/o. Shaikh Manjur, (3) Shaikh Yunus s/o. Shaikh Kashim, (4) Shaikh Anis s/o. Shaikh Kashim, (5) Shaikh Jahur s/o. Shaikh Kashim, (6) Shaikh Abed s/o. Shaikh Anis, be released on bail, on furnishing PB and SB of Rs.15,000/- each, with one solvent surety of the like amount, in C.R.No.250 of 2022 registered with Police Station Parli Rural Taluka Parali, District Beed, for the offence punishable under Sections 302, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, on the conditions that
 - (a) They shall not enter their village for the two months from the date of their release.
 - (b) They shall not tamper with the prosecution witnesses.
 - (c) They shall maintain the law and order.
- iii) Criminal Application No.3812 of 2022 stands disposed of.

**(S. G. MEHARE)
JUDGE**