

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1607 OF 2021

1. Vitthalrao s/o Nagorao Hodgir
 2. Sau. Shivnanda w/o Gajanan Hodgir
- Applicants
- Versus

The State of Maharashtra

Respondent

Mr. D.M. Shinde, Advocate for the applicants.
Mr. S.B. Narwade, APP for respondent/State.
Mr. R.N. Chavan, Advocate for the informant.

CORAM : M.G. Sewlikar, J.

DATE : 6th JANUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing applicants No. 1 and 2 on bail in connection with Crime No. 0183/2021 registered with Kurunda Police Station, Dist. Hingoli, for the offences punishable under Sections 302, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Facts in brief are that informant is the real nephew of applicant No 1 and applicant No. 2 is the daughter-in-law of

applicant No. 1. It is alleged in the First Information Report that there is dispute between father of the informant and applicant No. 1 on account of ancestral landed property. On 27th August, 2021, at 4.00 pm, applicant No. 1 and his son were cutting the trees on the common bund. Informant and his father Kundlikrao tried to restrain the applicant and his son from cutting the trees. Thereupon, applicant No. 1 beat the informant. When his father and mother Durgabai came to the rescue of the informant, applicant No. 1 and his son assaulted the parents of the informant with kicks and fists blows. When Sheshrao (since deceased), the real brother of the informant, came to know about the incident, he went to the house of applicants No. 1 and 2 along with his friends Ramrao Maske, Gajanan Gholap and Brahmanand Hodgir. At that very moment, accused Dnyaneshwar and Gajanan came there abusing the deceased. Soon thereafter, accused Dnyaneshwar went in the house and came back with an axe. Applicant No. 1 instigated accused Dnyaneshwar by saying that unless the deceased is eliminated, dispute on account of common bund would not be resolved and he further instigated accused Dnyaneshwar to assault the deceased. Thereafter, applicant No. 2 came there running. She threw chilli powder in the eyes of the deceased. Accused Gajanan held left hand

of the deceased and accused Dnyaneshwar delivered a blow of axe on the neck of the deceased. On these allegations, First Information Report came to be lodged on the basis of which offences under aforesaid sections came to be registered.

3. I have heard Shri Shinde, learned counsel for the applicants, Shri Narwade, learned APP for the State and Shri Chavan, learned counsel for the informant.

4. Learned counsel Shri Shinde submits that the only role attributed to applicant No. 1 is of instigating accused Dnyaneshwar. The fatal blow is given by accused Dnyaneshwar. He submits that the incident took place in front of the house of applicant No. 1. He further submits that applicant No. 1 is 68 years of age. Considering the role attributed to applicant No. 1 and his age, he be released on bail. So far as applicant No. 2 is concerned, he submits that the only allegation against her is of throwing chilli powder. Post Mortem report does not indicate that chilli powder was noticed in the eyes of the deceased.

5. Learned APP and learned counsel Shri Chavan submit that because of the instigation by applicant No. 1, the incident took place. The allegations in the First Information Report indicate that, before the incident in question, the informant and his parents were assaulted by applicant No. 1 and accused Dnyaneshwar. They submit that so far as applicant No. 2 is concerned, she is attributed with the act of chilli powder in the eyes of the deceased. Post Mortem report shows that cornea was hazy. Therefore, they pray for dismissal of the application.

6. Charge-sheet is filed. On perusal of charge-sheet, it is seen that applicant No. 1 instigated accused Dnyaneshwar and accused Gajanan to launch an assault on the deceased. The deceased had gone to the house of the applicants in connection with the incident which happened in the morning. Because of the instigation by applicant No. 1, accused Dnyaneshwar assaulted the deceased by means of an axe. The death was instantaneous. His instigation is the root cause of the incident. Therefore, I am not inclined to release applicant No. 1 on bail.

7. So far as applicant No. 2 is concerned, the only allegation against her is that she threw chilli powder in the eyes of the deceased. Post Mortem report does not indicate that chilli powder was used in commission of the offence. Except this, no other act is attributed to applicant No. 2. In this view of the matter, I am inclined to release applicant No. 2 on bail. Hence the following order :-

ORDER

- i) Application is partly allowed.
- ii) Application of applicant No. 1 Vitthalrao s/o Nagorao Hodgir is dismissed.
- iii) Applicant No. 2 Sau. Shivnanda w/o Gajanan Hodgir be released on PR Bond of Rs. 20,000/- (Rs. Twenty Thousand) with one solvent surety in the like amount in connection with Crime No. 0183/2021 registered with Kurunda Police Station, Dist. Hingoli, for the offences punishable under Sections 302, 323, 504, 506 read with section 34 of the Indian Penal Code, on condition that she shall not tamper the prosecution evidence and shall not pressurise the witnesses.

iv) Application stands disposed of.

v) 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

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 32 OF 2022 IN
BAIL APPLICATION NO. 1607 OF 2021

Avdhoot Kundlikrao Hodgir

Applicant

Versus

The State of Maharashtra & others

Respondents

Mr. R.N. Chavan, Advocate holding for Mr. V.A. Bagadiya, Advocate for the applicant.

Mr. S.B. Narwade, APP for respondent/State.

Mr. D.M. Shinde, Advocate for respondents No. 1 and 2.

CORAM : M.G. Sewlikar, J.

DATE : 6th JANUARY, 2022.

PER COURT :

Application is allowed.

(M. G. SEWLIKAR)
Judge

dyb