

Corrected in terms of the order dated 22/09/2022

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1956 OF 2021**

Mohd.Iftekar Moinuddin Sayyed & .. Applicants
Anr.

Versus

The State of Maharashtra .. Respondent

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Mr.Shantanu R. Phanse for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 15th SEPTEMBER, 2022

P.C:-

1. The two applicants are charge-sheeted for the offences punishable under Sections 302, 323, 341, 201, 109, 504, 506, 143, 147, 148, 149, 120-B of the Indian Penal Code. They are charged as accused Nos.1 and 5 in the charge-sheet and came to be arrested on 07/06/2020, when the incident occurred, which resulted in registration of C.R.No.I-347 of 2020, registered with Shanti Nagar Police Station.

2. 12 accused persons are charge-sheeted and it is informed by the learned counsel Mr. Phanse that four of the accused are released on bail in anticipation of their arrest whereas five persons are released on bail by the Sessions Court and one of the accused is released by this Court.

The two applicants remained incarcerated, since their applications are rejected by the Sessions Court on the ground that the cause of death has been ascertained as, hypovolcanic shock due to injuries to vital organ by hard and blunt object and the repeated assault had crushed both the Tibia bones.

3. With the assistance of the learned counsel for the applicant and the learned A.P.P., I have perused the material compiled in the charge-sheet.

The prosecution case which can be culled out from the charge-sheet is to the effect that the complainant, Mohammed Akram Akbar Ali alleged that few months before, his niece Seba has lodged the complaint against the brother of accused Nos. 1 and 2, namely, Akhtar Ansari @ Sayyed and Bhiwandi Taluka Police Station has registered offence of rape against him. Since, he was languishing in jail, his relatives were putting pressure on the complainant.

He reported about the incident of 06/06/2020, when he was present in his locality. At that time, the named accused persons approached him and it is alleged that Istikar i.e. applicant No.1 assaulted him by means of an iron rod. According to him, he was hit on his legs and left hand, resulting into fracture. As far as accused No.2 is concerned, the complainant stated that he also assaulted him by a wooden stick, causing injuries. He was taken to the hospital and at his instance, the complaint was registered.

4. The complainant succumbed to the injuries on the very next day i.e. 07/06/2020. Inquest panchanama was conducted on the very same day, which refer to the injuries on his leg and elbow. It is specifically recorded that from the chest and stomach, the whole body is intact. Bleeding is seen from the tibular bone of left leg and swelling is noted on the tibia of right leg. The inquest panchanama record that apart from this, there are no other injuries.

5. An autopsy was conducted and in Column No.17, there is reference to three abrasions on arm and the 4th and 5th injuries are described as "left and right tibia maligned". It also record palpable fracture. There is no injury in column No.19. As far as column No.21 is concerned, there is reference to the

lacerated wound over liver of 3 cm x 1 cm x 1 cm

The cause of death is ascribed as, "Death due to hypovolcanic shock due to injury to vital organ by hard and blunt object".

6. During the course of investigation, prosecution has recorded the statement of several witnesses and have compiled them in the charge-sheet.

Taking the prosecution case as it is, the deceased himself has lodged the report and attributed specific role of assault by means of an iron rod and wooden stick on his hands and legs by the applicants, resulting into fracture injury. The inquest panchnama does not reveal any other external injury. However, the postmortem report opines that the death is on account of injury to the vital organ. The prosecution has not bothered to raise any query with the Medical Officer about the final opinion expressed in the postmortem report.

7. Ultimately, the prosecution will have to establish it's case in the trial that the injuries mentioned in column No.17 of the postmortem report are caused by the applicants and which resulted into the death of the complainant, since the postmortem report does not refer to any other injury to the

vital organ and, surely, the hands and legs are not vital organs. In the wake of the above, though the applicants face the trial on being charged for the offence of murder, at present, their incarceration in the wake of the material compiled in the charge-sheet is unnecessary and they deserve their release on bail.

However, this is subject to the condition that the applicants shall not enter the jurisdiction of Bhiwandi Taluka , except for marking their presence on the given dates.

: ORDER :

- (a) Application is allowed.
- (b) Applicant No.1 -Mohd.Iftekar Moinuddin Sayyed and applicant No.2- Abushma @ Ammu Moinuddin Sayyed shall be released on bail in connection with C.R.No.I-347 of 2020 registered with Shanti Nagar Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.
- (c) The applicants shall remove themselves alongwith their family from Bhiwandi Taluka and shall

not step into its jurisdiction, except for limited purpose of marking attendance.

(d) The applicants shall mark their attendance before the concerned police station on first Thursday of every trimester between 4.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(e) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicants shall give their contact numbers and address of their residence, where they propose to live to the Investigating Officer and shall keep him updated, if there is any change.

(SMT. BHARATI DANGRE, J.)