

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3048 OF 2021

1. Mr.Rohit Ramdas Kalgude.
2. Mr.Shubham Rajendra Ghadge,
3. Mr.Ranjit Dhanaji Suryavanshi ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr.Ashok P. Mundargi, Senior Advocate with Mr.Satyam Nimbalkar with
Priyanka Gharge for Applicants.

Mr.A.R. Kapadnis, APP for State.

Mr.Sanjeev P. Kadam with Prashant Raul for Complainant/Intervener.

CORAM : C.V. BHADANG, J.

DATED : 31 MARCH 2022

P.C. :

. By this application, the Applicants (Accused Nos. 11, 10 and 9) are seeking enlargement on bail in Crime No.80/2021 registered at Vaduj Police Station for offences punishable under Sections 302, 143, 147, 148, 149 and 323, 201 and 109 of IPC and under Sections 3 and 25 of the Arms Act.

2. The deceased Jagdeep Thorat was working as a General Manager (Processing) with Khatau Man Taluka Agro Processing Ltd. which is a sugar factory ('the factory' for short). An inquiry was conducted with respect to the alleged misappropriation of sugar against the deceased and the management was suspecting that the deceased Jagdeep, along with others, was responsible for the misappropriation of sugar in the factory.

3. The incident, which has given rise to the prosecution, had happened on 10 March 2021 between 5 to 8 p.m., initially in the cabin of the co-accused Ashok Nalawade and thereafter, in the cabin of co-accused Manoj Ghorpade. It is alleged that the accused assaulted the deceased with fist and kick blows along with fiber sticks and sugarcane sticks as a result of which Jagdeep sustained serious injuries. At about 8.30 p.m. Ashwini Thorat, who is the wife of the deceased, with Vikram Patil, who is brother-in-law of the deceased, came in the factory. Initially, they were not allowed entry in the premises. However, after getting entry, both of them carried the deceased to the house the following morning, he was carried to the hospital, where on admission he was declared dead.

4. It appears that the incident was initially reported to Karad Police Station, where the case of unnatural death was registered and the same was inquired into, in which the statement of Vikram Patil and Ashwini Thorat was recorded on 11 March 2021. The factory, where the incident had happened, was within the jurisdiction of Police Station Vaduj. Accordingly, the matter was transferred to Vaduj Police Station, where again statement of these two witnesses, along with other prosecution witnesses, came to be recorded. The supplementary statement of Vikram Patil was also recorded. Incidentally, the statements of these witnesses were also recorded before the learned Magistrate under Section 164 of Cr.P.C.

5. The dead body of Jagdeep was sent for post mortem examination and the post mortem report shows that Jagdeep had died of hemorrhagic shock due to multiple contusions as a result of hard and blunt impacts (unnatural). Upon completion of investigation, charge sheet is filed.

6. I heard learned Counsel for the parties. With the assistance of learned Counsel for the parties, I have gone through the record.

7. It is submitted by learned Senior Counsel for the Applicants that the prosecution case is based on the alleged oral dying declaration made by Jagdeep Thorat to Vikram Patil and his wife Ashwini Thorat. It is submitted that none of these witnesses are eye witnesses to the alleged incident of assault. It is pointed out that the deceased has not named the present Applicants as assailants in his oral dying declaration. Secondly, it is submitted that the identification of the present Applicants in the TI parade held on 23 April 2021 cannot be said to be in the context of any particular role, which is attributable to them, inasmuch as, Vikram Patil and Ashwini Thorat are not the eye witnesses to the incident of assault.

8. Learned APP has submitted that the prosecution witnesses have stated about the presence of the Applicants in the factory premises. He has also referred to the statement of Yashant Bhorkade, who is one of the co-accused. It is submitted that the Applicants have also been identified in the test identification parade.

9. I have considered the rival circumstances and the submissions made. There cannot be any manner of doubt that the incident, by any standard, is serious, in which an officer of the rank of the General Manager was assaulted in the factory premises resulting into his death. Even assuming that there was any allegation of misappropriation of sugar against him, the record discloses that the matter was already reported to the police and the inquiry was conducted.

10. Be that as it may, insofar as the present Applicants are concerned, there are two circumstances, namely, oral dying declaration made by the deceased to Vikram Patil and his wife Ashwini Thorat while the deceased was being carried from the factory premises by these witnesses and second, the identification of these Applicants by the witnesses in the test identification parade. In my considered view, admittedly, none of these two witnesses, namely, Vikram Patil and Ashwini Thorat, are the eye witnesses and they did not claim to have witnessed the actual assault much less attributing the assault to the present Applicants. It is necessary to note that the identification in the TI parade has to be in the context of a particular role, which may be attributable to the accused/suspect. Except these two circumstances, there are no other circumstances brought to my notice. There is no recovery of any incriminating article from the Applicants.

11. Learned APP has pointed out that one of the Applicants has shown cabin of Ashok Nalawade, where the deceased was allegedly assaulted. There is a serious doubt whether the showing of cabin, which is already known to the Investigating Officer as the place of the alleged assault can be said to be a fact discovered within meaning of Section 27 of the Evidence Act.

12. Learned Counsel for the Applicants has sought parity with Ashok Nalawade, who has been granted bail by this court by order dated 17 September 2021 in Criminal Bail Application No.2667/2021. Learned APP submitted that the parity may not apply, as Ashok Nalawade has not been identified in the test identification parade.

13. It is necessary to note that Ashok Nalawade was not included in the TI parade itself and therefore, there is no question of his identification in any such TI parade. The fact remains that the even Ashok Nalawade has not been named by the deceased in his dying declaration. In that view of the matter, I find that the parity would apply. The investigation is complete and chargesheet is filed.

14. In such circumstances, the following order is passed :

(i) The Applicants - Rohit Ramdas Kalgude, Shubham Rajendra Ghadge and Ranjit Dhanaji Suryavanshi be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/-each with one or two solvent sureties in the like amount.

(ii) The Applicants shall undertake to remain present before the learned Sessions Judge during the trial, unless exempted.

(iii) The Applicants shall not tamper with the prosecution evidence/witnesses.

(iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(v) The bail bonds to be furnished before the learned Sessions Judge.

(vi) The Criminal Application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)