

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3233 OF 2021

Kiran Dhondiram Jadhav & Anr. ..Applicants
Vs.
The State of Maharashtra ..Respondent

Mr. Girish R. Agrawal a/w. N. B. Boraste, for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent / State.

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CORAM : C.V. BHADANG, J.
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P.C.

. The Applicants, who are the co-accused in Crime No.82/2021 of Police Station Chandwad, District Nashik (Rural), under Section 302, 323 and 504 r/w. 34 of IPC, are seeking bail.

2. The aforesaid crime is registered on the basis of the complaint lodged by Ankush Ramkrishna Jadhav who is son of the deceased Ramkrishna Jadhav. It appears that there was a long standing enmity on account of property dispute between Ramkrishna and his brother – Applicant Dhondiram Jadhav. The Applicant Kiran happens to be the son of Dhondiram Jadhav. The incident is alleged

to have happened on 7 March 2021, when Ramkrishna alongwith his grandson Dnyaneshwar were proceeding to Maruti Temple at about 5.30 p.m. when cattles of the Applicants came in their way. Ramkrishna is alleged to have asked them to take the cattles, aside when some altercation ensued. After this, when the deceased Ramkrishna and his grandson Dnyaneshwar were sitting at the temple, at about 6.30 p.m., the Applicants went there and accosted the deceased, after which there was some scuffle in which Sarjerao Jadhav who is another brother of the deceased intervened. It is said that at that time Applicant Kiran picked up a wooden log (out of the centering material kept by Dattu Sarjerao Jadhav) and assaulted the deceased Ramkrishna on his head whereupon Ramkrishna fell down and died on the spot. On the basis of the complaint lodged by Ankush Jadhav, the offence came to be registered and after investigation, a chargesheet is filed.

3. I have heard the learned counsel for the parties. Perused record.

4. There are at least two eye witnesses to the incident namely Sarjerao Jadhav and Dnyaneshwar Jadhav who claim that the Applicants went to the Maruti Temple where the deceased Ramkrishna and Dnyaneshwar were sitting. There was an altercation and scuffle, after which, Kiran picked up a wooden log

and assaulted Ramkrishna on the head. The Post Mortem report shows that Ramkrishna died on account of “Cardio respiratory arrest due to fronto parietal extra-dural haematoma as a result of head injury”.

5. The learned counsel for the Applicants submitted that the incident had happened at the spur of the moment without any pre-meditation and there was a single blow. Thus, in the submission of the learned counsel, the offence would not fall under Section 302 of IPC. There was no intention to cause death which is attributable to the Applicants.

6. Learned APP submitted that the assault by the Applicant Kiran was by a wooden log on the head which would *prima facie* indicate intention to cause death.

7. I have considered the circumstances and the submissions made.

8. In so far as Applicant No.2 Dhondiram Chindha Jadhav is concerned, the only allegation in the statement under Section 164 of Cr.P.C. of the eye witnesses is that he assaulted the deceased by kicks and fist blows. However, in so far as Applicant Kiran is concerned, the eye witnesses have stated that he assaulted the deceased by a

wooden log (which was part of the centering material lying on the spot), on the head of the deceased.

9. The issue whether the offence would fall under Section 302 or lesser offence under Section 304 of IPC, can be gone into at the time of trial. In my considered view, the Applicant Dhananjay Jadhav can be released on bail.

10. In such circumstances, the following order is passed.

ORDER

(i) The Application for bail of Applicant No.1 Kiran Dhondiram Jadhav is hereby rejected.

(ii) The Applicant No.2 Dhondiram Chindha Jadhav, be released on bail in Crime No.82/2021 of Police Station Chandwad, District Nashik (Rural), be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) The Applicant shall undertake to remain present before the learned Sessions Judge during the course of trial, unless exempted.

(iv) The Applicant shall not directly or indirectly make any attempt to tamper with the prosecution evidence or witnesses.

(v) The trial is expedited.

(vi) It is made clear that the observations made herein are *prima facie* in nature, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

C.V. BHADANG, J.