

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

CRIMINAL BAIL APPLICATION NO.3875 OF 2021

1. Suresh Sonya Patkar, & 2. Raghu Malya Patkar @ Raghu Mariya Patkar	 Applicants
Versus	
The State of Maharashtra	 Respondent

Mr. N.M. Nadar, Advocate for the Applicants.
Mr. M.G. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th FEBRUARY, 2022

P.C. :

1. The applicants are seeking their release on bail in connection with C.R.No.170/2020 registered at Talasari police station, Palghar. Initially the offence was registered only under Section 326 read with 34 of IPC. Subsequently the other offences i.e. under Sections 302, 323, 143, 144, 147, 148, 149 and 34 of IPC were added.

2. The deceased in this case is Dharma Dhapsa. The incident is dated 22.7.2020. Dharma died on 11.8.2020. Applicant No.1 was arrested on 19.9.2021 and applicant No.2

was arrested on 20.9.2021. The investigation is over and the charge-sheet is filed. All other accused are released on bail by this Court vide order dated 11.3.2021 passed by this Court (Coram: Prakash D. Naik,J.) in Bail Application No.199/2021.

3. Heard Shri N.M. Nadar, learned counsel for the applicants and Shri M.G. Patil, learned APP for the State.

4. The prosecution case is reflected in the FIR lodged by the wife of the deceased. She has stated that they had a land at Dogripada. Applicant No.1 had an adjoining land. It was case of the informant that actually the land did not belong to applicant No.1. The land was cultivated by informant and her family and they were taking rice crop. On 22.7.2020 at about 10.00 a.m. when the informant and others attending to the crop, present applicant No.1 along with two others came there with bamboo sticks and started assaulting the informant's family i.e. her husband Dharma, two sons and daughter-in-law. The informant also was assaulted. She became unconscious and therefore she was taken to hospital for medical treatment. On this basis, the FIR was lodged.

5. In her statement recorded under Section 164 of Cr.P.C. on 28.8.2020, she stated that when her husband came back home after treatment, he told her that applicant No.1 was accompanied by Pralhad Patka, Damu Patkar, Manoj Vadhane and others. There are other eye witnesses to the incident.

6. Learned counsel for the applicants submitted that applicant No.2 was not named in the FIR and even in her other statement, he was not named. No specific role of assault is attributed to applicant No.1. All other accused, who were named subsequently, were granted bail by this court, as mentioned earlier. The reasons, as observed in the order, were that the statements of the eye witnesses were recorded belatedly, those accused were implicated belatedly, the deceased had died after a few days and it was debatable whether the offence under Section 302 of IPC was made out.

7. Learned counsel submitted that the investigation is already over and on the ground of parity also, the applicants deserve to be released on bail. He invited my

attention to the injury certificates of the deceased and other injured to contend that assault on the deceased does not indicate that the ingredients of Section 300 of IPC are satisfied.

8. Learned APP opposed this application. He submitted that applicant No.1 is immediately named in the FIR. The statements of eye witnesses, though recorded subsequently, also name both the applicants. Specific roles are attributed to them and therefore bail should not be granted to them. He submitted that by the very same order whereby others were granted bail, both these applicants' prayer for anticipatory bail was rejected.

9. I have considered these submissions. Apart from the first informant, there are other eye witnesses who were family members of the deceased. Sunil Dharma Dhapsa is son of the deceased. His statement was recorded on 10.8.2020. He has named both the applicants and other accused, namely, Pralhad Patkar, Damu Patkar, Nitin Medha, Manoj Vadhane and others. These named accused were

granted bail by this Court, as mentioned above. Though Sunil has named some more accused the charge-sheet is not filed against those persons. Therefore, Sunil's statement is not completely reliable.

10. The other eye witness was Ajit Dhapsa, who was injured in the incident. He had attributed role of assault on himself by applicant No.2 and has ascribed role of assault on the deceased by applicant No.1. He has also named the others, viz., Damu Patkar, Pralhad Patkar and applicant No.2 as well for causing assault to his father.

11. The next eye witness Meena was Ajit Dhapsa's wife. She has generally spoken about the incident but she has not given specific names.

12. The statements of Ajit and Sunil were also recorded under Section 164 of Cr.P.C.. The post-mortem notes show that the deceased had suffered many injuries. There was no serious injury to the head but there was fracture of 11th rib on the right side and 4th & 5th ribs on the left side. The cause of death was mentioned as "pulmonary hemorrhage

with hemothorax and sepsis leads to cardio-respiratory arrest causing death”. Thus these injuries can be relatable to the assault which had taken place on 22.7.2020. However, the injury certificate issued by the Primary Health Centre on immediate examination shows only two simple injuries which were described as blunt trauma. As against that, Ajit had suffered in all six injuries out of which two injuries were grievous. As far as the deceased is concerned, he had survived for 20 days. The first injury certificate showed that he had suffered only two simple injuries in the nature of blunt trauma. Therefore, the narration in the statements of eye witnesses as well as the first informant appears to be little exaggerated. At this stage, the prosecution does have some material to show their presence and participation in the assault. However, I am inclined to agree with the observations made by this Court (Coram: Prakash D. Naik, J.) in the order passed in Bail Application No.199/2021 that it is debatable whether Section 302 of IPC would be attracted in this case. The same reasons and principles apply to the case

of the present applicants as well. Therefore, considering the fact that all other accused who were similarly named by other eye witnesses are granted bail, parity applies in favour of all the present applicants. The investigation is over and the charge-sheet is already filed. Therefore, they deserve to be released on bail. Hence the order :

ORDER

- (i) In connection with C.R.No.170/2020 registered with Talasari police station, Palghar, the Applicants are directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Deshmane (PS)

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