

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4408 OF 2021**

Raju Bhau Sutar

Age 35 years, Occu – Labour.

R/at : Mhasurli Paiki Kumbharwadi,

Tal. Radhanagari, Dist. Kolhapur

(at present Kolhapur Central Jail)

... Applicant

versus

The State of Maharashtra

at the instance of the Radhanagari

Police Station C.R.No.77 of 2021)

... Respondent

Mr. Avinash M. Reddy, for Applicant.

Mrs. J.S.Lohakare, APP, for State.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 27th JUNE, 2022

PRONOUNCED ON : 5th JULY, 2022.

P.C.

1. By virtue of this Application, the Applicant/Accused No.1 seeks to be enlarged on bail in C.R.No.77 of 2021 registered with Radhanagari Police Station for the offences punishable under Sections 302, 307, 324, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and Section 135 of the Maharashtra Police Act.

2. Mr. Indrajit Rangrao Kumbhar, first informant, resides at Mhasurli, Tal Radhanagari, Kolhapur, along with his brother Omkar, parents and grand-parents. On 21st April, 2021 at about 8.30 p.m., there was an altercation between the first

informant's brother Omkar and the Applicant – Raju Bhau Sutar, as the Applicant while riding the motorcycle, gave dash to Omkar. On 22nd April, 2021 at about 7.30 a.m. on account of the said altercation on the previous night, the Applicant and co-accused Ranoji Vishnu Sutar, Vitthal Vishnu Sutar, Amar Nandu Sutar, Vishwanath Balu Sutar, Balu Vishnu Sutar and Sanjay Bhau Sutar, formed an unlawful assembly and charged on the house of the first informant. They started to abuse the family members of the first informant. When the first informant's father Rangrao remonstrated, the Applicant – Raju and the co-accused Ranoji, started to beat Rangrao (deceased) by means of sticks with which they were armed, on his head and hand. When the first informant and Omkar went ahead to restrain the Applicant and Ranoji, the co-accused Vitthal gave a blow by means of stick on the head of the first informant, and co-accused Amar and Vishwanath assaulted Omkar by means of stick. The first informant's uncle Dattatraya was assaulted by co-accused Balu and Sanjay. The other relatives and neighbours of the first informant rescued the first informant, deceased and injured. As the deceased sustained grievous injuries, he was shifted to CPR Hospital, Kolhapur. The deceased succumbed to the injuries on 28th April, 2021.

3. The Applicant and the co-accused were arrested. The Applicant has filed an Application for bail on the ground that the Applicant himself had lodged a FIR in respect of the very same incident against the informant party being C.R.No.80 of 2021. Infact, the informant party was aggressor. The Applicant and his associates

also sustained injuries in the very same occurrence. The investigation is complete. The learned Sessions Judge has exercised discretion in favour of similar circumstanced co-accused, yet declined to give same dispensation to the Applicant. Hence, this Application.

4. I have heard Mr. Reddy, learned Advocate for the Applicant and Mrs. Lohakare, learned APP for the State at some length. With the assistance of the learned Counsel for the parties, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

5. The learned Advocate for the Applicant invited the attention of the Court to the FIR No.80 of 2021 lodged by the Applicant against the first informant, deceased and other members of the informant party for the offences punishable under Sections 143, 147, 148, 149, 324, 323, 427, 504 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, to the effect that the members of the informant party assaulted them by means of sticks and axe. It was submitted that the Applicant and the co-accused have been roped in for major offence punishable under Section 302 of the Indian Penal Code for the mere reason that the deceased died on 28th April, 2021, though the said death is unconnected with the alleged assault.

6. To bolster up the aforesaid submission, Mr. Reddy invited the attention of the Court to the certificate dated 28th April, 2021 issued by Dr.D.Y.Patil Medical College, Hpsital and Research Institute, Kolhapur, wherein it is recorded that the

deceased was Covid-19 positive. Mr. Reddy would further urge that the co-accused Ranoji Sutar, to whom an identical role was attributed, was ordered to be released on bail by the learned Sessions Judge. Therefore, on the ground of party as well, the Applicant deserves to be enlarged on bail.

7. The learned APP, on the other hand, resisted the prayer for bail. It was submitted that the Applicant – accused No.1 was the principal assailant and on account of the blows inflicted by the Applicant by means of stick on the head of the deceased, the latter died on 28th April, 2021. The Applicant allegedly exhorted the rest of the accused to mount assault on the first informant and other members of the informant party. Sticks have been recovered pursuant to the discovery made by the Applicant. Therefore, the Applicant does not deserve the exercise of discretion.

8. Apart from Ranoji, the co-accused, the learned Sessions Judge, it seems, was persuaded to release on bail the other accused namely Vitthal, Balu and Sanjay. It appears that in respect of the very same incident, the first informant had lodged a report being C.R.No.80 of 2021. However, the mere fact that a cross FIR is lodged in respect of the very same incident, does not imply that the prosecution version is suspect. A case and cross case are essentially two versions of one and the same incident. In the very nature of the things which of them one is true, is a matter for evidence and trial.

9. I have perused the allegations in the FIR. Indrajit Kumbhar, first informant, attributes the role of assaulting the deceased by means of stick to Applicant and Ranjoji. They allegedly assaulted the deceased by means of stick on the head and left hand. The injury certificate dated 22nd April, 2021 issued by Casualty Medical Officer, Dr. D.Y.Patil Hospital, reveals that the deceased had sustained three CLW over the head, first on the left side of forehead, second on left parietal region and the third on occipital region. The injuries were grievous in nature. The deceased had also sustained CLW over the left thumb, which was designated simple. All the injuries were possible by hard blunt object. CT scan showed fracture of left parietal bone with adjacent extradural haematoma in left fronto parietal region.

10. It would be contextually relevant to note that Dattatraya and Omkar, the uncle and brother of the first informant, who were present at the scene of occurrence, apart from the first informant and the deceased and were also allegedly assaulted by the accused, have attributed the very same role to the Applicant and Ranjoji, the co-accused. For them as well, the Applicant and the co-accused Ranjoji assaulted the deceased by means of stick on head and left hand.

11. It is true that the certificate records that the deceased was infected with Covid-19. Probably for this reason, post mortem examination of the deceased was not conducted. Nonetheless, the material on record indicates that the deceased had sustained grievous injuries on the head. At this juncture, I find it rather difficult to

accede to the submission on behalf of the Applicant that there is no co-relation between the injuries sustained by the deceased in the said occurrence and the death, and it is attributable to Covid-19 infection solely. It could, however, be urged that Covid-19 infection contributed to, and accelerated, the death.

12. The submission on behalf of the Applicant that the Applicant is similarly circumstanced like the co-accused Ranoji, however, deserves consideration. While releasing the co-accused Ranoji, the learned Sessions Judge observed as under :

“9. In the present case FIR came to be lodged under Section 302 of IPC and thereafter, section 307 added to said CR. Then the deceased tested positive and then he died. The Applicant/accused is 77 year old. As per the allegations applicant/accused with co-accused assaulted on the head of the deceased. It is also observed that in the cross case lodged by accused No.1 against informant and his family applicant/accused has sustained fracture injury. Considering the age of applicant/accused and considering fact that charge sheet is already filed by putting conditions the applicant/accused is entitled to release on bail. This observation is made only for discussion of present bail application. It cannot be a ground of parity for co-accused. Hence, I proceed to pass the following order.”

13. Evidently, the learned Additional Sessions Judge considered the factors peculiar to the Applicant – Ranoji like the advanced age and injuries allegedly sustained in the very same occurrence, while exercising the discretion in his favour. The said exercise of the discretion appears judicious. However, the fact remains that not only the first informant, but even the injured witnesses Omkar and Dattatraya,

attributed the very role to the Applicant which was attributed to the co-accused Ranoji qua the part played by the Applicant and Ranoji. I am afraid no distinction can be made in the role attributable to the Applicant and Ranoji.

14. The matter can be looked at from a different perspective. Both the Applicant and Ranoji allegedly assaulted the deceased by means of stick on head. Three CLW were found on the head of the deceased. It is a matter of evidence and trial as to which injury corresponds to the blow unleashed by the two of the accused. Thus, though the distinction can be made on the basis of the personal attributes of the Applicant and Ranoji, yet so far as the role of assault attributed to them, no distinction can be legitimately drawn.

15. Evidently, the rest of the accused, as indicated above, also seems to have been released on bail. The investigation is complete for all intent and purpose. Further detention of the Applicant does not seem to be warranted. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Raju Bhau Sutar be released on bail in C.R.No.77 of 2021 on furnishing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Kolhapur.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The Applicant shall furnish his permanent address and contact details to the Investigating Officer within seven days of his release from prison and update any change therein.

(v) The Applicant shall not leave the limits of Kolhapur District without prior permission of the learned Sessions Judge.

(vi) The Applicant shall regularly attend the proceedings before the Court of Session, Kolhapur.

(vii) By way of abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant or co-accused.

(N.J.JAMADAR, J.)