

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.51 OF 2022

Akshay s/o Mangalsingh Kumare and another

Vs.

State of Maharashtra, Through Police Station Officer, Bharmanwada Thadi,
Police Station, Tq. Chandur Bazar, Dist. Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. D. Thamke, Advocate for applicants.

Mr. S. M. Ghodeswar, APP for non-applicant /State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/02/2022

Heard Mr. Thamke, learned counsel for the
applicants and Mr. Ghodeswar, learned APP for non-
applicant/State.

2. The applicants have been arrayed for the offence punishable under Section 302, 324, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code, in which, one Sahadeo Gajam and one Bisan, have lost their lives.

3. Mr. Thamke, learned counsel for the applicants submits, that the applicants were arrested on 08.07.2020, the charge-sheet has been filed on 28.09.2020, and therefore, there is no further need for continuing the incarceration of the applicants. He

submits, that the nature of the incident would indicate, that it was done in private defence, the injuries are not on any vital part of the body, the applicants are tender years of age and there is no intention on part of the applicants, to cause the death of the deceased persons as would be indicated, from the postmortem report of Sahadeo Bisan Gajam which would indicate that the injuries are on the hands and legs and not any vital part of the body, the cause of death being cardio respiratory arrest due to multiple injuries (page 105) and that of Bisan Bhikaji Gajam (page 82). He further submits that on 07.07.2020, the complaint was filed by the accused No.1 regarding assault by the deceased to him at his residence in respect of which NC Report was given on 07.07.2020 (page 267). He therefore, submits that the applicants are entitled to release on bail.

4. Mr. Ghodeswar, learned APP for non-applicant/State opposes the application and contends that this is a case of double murder and the incident has happened not at one place, but at two separate places, wherein at the first instance, the accused had been to the field where Sahadeo was present and had assaulted him and thereafter, had come to the residence of deceased in the village where Bisan was assaulted, both of whom, have unfortunately passed away. He further submits, that there are eyewitnesses to both the incidences namely, Arun Nandu Kumre (page 220), Sumitra Saduram Uke (page 222) and Ku. Roshani Gajam (page

224). He therefore submits, that though the charge-sheet has been filed, this is a case which does not deserve the release of the applicants on bail.

5. The facts on record, indicate that on 07.07.2020 there was an altercation between the applicants and the deceased, in which a claim has been made of the deceased assaulting the applicants and their relatives. The date of incident is 08.07.2020, considering which, the contention raised that the applicants are entitled to a plea of private defence may not be tenable. The incident had occurred at two different places, one at the agricultural field where Sahadeo Gajam was assaulted. The second incident, had happened at the residence of the deceased in the village, where the applicants, had travelled all the way from the agricultural field to the residence and had there assaulted Bisan, who also succumbed to the injuries and the eyewitnesses namely, Arun, Sumitra and Roshani substantiate this position. The recovery also has been made from Akshay under Section 27 of the Indian Evidence Act and the iron pipe as well as the rod used in the assault have been recovered from him. All the eyewitnesses, attribute specific role to the applicants. The postmortem report though shows the injuries on the hands and legs, however, the cause of death is directly attributable to the shock received on account of the injuries.

6. Considering the above position, I am not

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inclined to accept the application, though, the applicants are of tender years of age, however, the demise of the two persons named above is attributable to their actions, considering which, the criminal application is rejected.

JUDGE

Sarkate