

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

CRIMINAL APPLICATION (BA) NO.161 OF 2022

Kishor s/o Rambhau Gaikwad and another

Vs.

The State of Maharashtra, Through the Police Inspector, Pimpalgaon Raja, Police
Station, Pimpalgaon, Taluka Nandura, District Buldhana

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

Court's or Judge's orders

Mr. Anil Mardikar, learned Senior Counsel a/b Mr. V. R. Deshpande, Advocate for the
applicants.

Mr. I. J. Damle, APP for non-applicant /State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/04/2022

Heard Mr. Mardikar, learned Senior counsel
for the applicant and Mr. Damle, learned APP for
non-applicant/State.

2. The applicants have been arraigned for the
offence punishable under Sections 302, 307, 143, 149,
323 of the Indian Penal Code in Crime No.238 of 2021.

3. The incident is dated 05.10.2021 and the
FIR is dated 07.10.2021. The applicants have been
arrested on the same day. The charge-sheet has been
filed on 04.01.2022.

4. Mr. Mardikar, learned Senior counsel for the
applicant submits that the applicants have been falsely

implicated in the above said crime. He further submits that there is a delay in lodging the FIR, which was done on 07.10.2021. Though, the deceased Dilip was alive till 19.10.2021 i.e. for a period for 10 days his dying declaration was not recorded. The report of the chemical analyzer indicating that the death was due to poisoning is yet awaited and since the charge-sheet has been filed the entire investigation is complete and there is no need for further incarceration. The reliance is placed upon ***Ram Das Vs. State of Maharashtra, 1977 (2) SCC 124*** (para 13).

5. Mr. Damle, learned APP for non-applicant/State opposes the application and submits that there is an earlier enmity between the deceased and applicant. The statement of the deceased recorded by the Doctor on 05.10.2021 at 8.35 p.m. (page 25) which is also supported by the statement of Dr. Chetan Sureshrao Bhende (page 116), which is recorded on 26.12.2021 is relied on. The statements of Dilip Baliram Mankar (page 105) and Dnyaneshwar Vinayak Jawanjali (page 106) have also been relied in opposing the application. The Postmortem Report is also pressed into service.

6. The incident is dated 05.10.2021 when the deceased while going from his agricultural field to his residence, was accosted by the applicants along with

three other persons, who had after waylaying the deceased, had tried to administer poison to the deceased. The statement of the deceased as recorded on 05.10.2021 by the Doctor, indicates that the applicant no.1 Kishor Rambhau Gaikwad (Chhotya) and Pakkya Kurhade had assaulted the deceased on his chest and back and had forcibly tried to administer poison to the deceased. The deceased had become unconscious, and the passers who have noticed the deceased lying on the road, had called the brother of the deceased on phone, who had admitted the deceased in the Primary Health Center, Nandura. The statement of the Doctor namely Chetan Sureshrao Bhende (page 116) is commensurate with the incident as narrated by the deceased (page 25). The statement of Dilip Baliram Mankar as well as Dnyaneshwar Vinayak Jawanjal (page 105 and 106) indicate a past enmity between the applicants and the deceased and so also the finding of the body of the deceased on 05.10.2021 at about 7.15 p.m. on the bank of Billori Nala where the deceased was lying in the water. The Postmortem report also commensurate the finding of poisoning and assault on the chest and the back.

7. Considering the above position, the role of the applicant no.1 Kishor Rambhau Gaikwad, as stated by the deceased, clearly indicates his involvement in the crime. Though, much stress is laid on the statement of the deceased, that he did not permit the poison to go

inside his mouth, however the factual position as is availing on record indicates otherwise. The role of the applicant no.1 in administering the poison is also apparent. It is not a case as if there are no signs of resistance in as much as there are minimal assault marks on chest and back of the deceased as found in the Postmortem Report as well as in the MLC Report dated 05.10.2021 (page 23), and therefore, **Ram Das** (supra) is not attracted, considering which, in so far as the applicant no.1 is concerned, I do not find any merit and the application of applicant no.1 is rejected.

8. Even the statement of the deceased (page 25) does not attribute any action to the applicant no.2 Amol Rambhau Gaikwad, except of remaining present on the spot where the deceased is said to have been assaulted by the applicant no.1 and Pakkya Kurhade who also tried to administer poison, considering which, so far as the applicant no.2 is concerned, a case for bail is made out. Hence the following order.

ORDER

- (i) The application is partly allowed.
- (ii) The application so far as applicant no.1 is concerned, stands dismissed.
- (iii) The application in so far as the applicant no.2 is concerned, stands allowed.

(iv) The applicant no.2 Amol Rambhau Gaikwad be released on bail for the offence punishable under Sections 302, 307, 143, 149, 323 of the Indian Penal Code in Crime No.238 of 2021, registered with Police Station Pimpalgaon Raja, District Buldhana, on his executing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh) and two solvent sureties of the like amount.

(v) The applicant no.2 shall not, directly or indirectly make any attempt to influence the witnesses or otherwise tamper with the prosecution evidence.

(vi) The applicant no.2 shall attend each and every date before the learned Sessions Court and ensure that the trial is not protected on his count.

(vii) The applicant no.2 shall not enter the jurisdiction of Police Station, Pimpalgaon Raja, District Buldhana during the course of the trial and shall keep in touch with the Investigating Officer and at all times inform the learned Sessions Court of the address of his residence, as well as his current live mobile number.

JUDGE

Sarkate