

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

CRIMINAL APPLICATION (BA) NO. 866 OF 2022

Dipak s/o Shridhar Jadhav and another **Vs.** State of Maharashtra, through PSO., PS Dhamgangaon Badhe, District Buldhana.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Mardikar, Senior Advocate with Shri S.G. Joshi, Advocate for the applicants.

Ms K.R.Deshpande, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 16/09/2022

Heard.

2. The applicants are seeking bail in connection with Crime No. 237 of 2021, registered with Police Station Dhamgangaon Badhe, Dist. Buldhana, for the offences punishable under Sections 302, 307, 324, 143, 147, 148, 149 of the Indian Penal Code, 1860.

3. Shri A.S. Mardikar, learned Senior Advocate for the applicants argues that earlier application was withdrawn by the applicant on 23/12/2021 and considering the fact that, there is no progress in the trial and the all other accused persons, except the applicants have already been released on bail, the present application is filed.

4. It is submitted that, as far as the death of the deceased Prabhakar is concerned, the Post Mortem report does not show any injury to the head.

5. It is pointed out that, column No. 17 shows two injuries namely – (1) IV needle mark and (2) Old healed abrasion. He, therefore, submits that if the allegations are considered as far as the assault to the deceased, it can be seen that general and vague allegations are there, and similarly circumstanced accused have already been released on bail. He, therefore, submits that the applicants are entitled for grant of bail on the principles of parity.

6. It is further submitted that, there is a counter FIR, which shows that the offence was not pre-meditated and it took place in a heat of rage.

7. He lastly argued that, after completion of the investigation, the charge-sheet has been filed and considering the period of incarceration of the applicant, further custody of the applicant is not necessary.

8. On the other hand, learned APP strongly opposed the present application and she has drawn attention to the statement recorded under Section 164 of Code of Criminal Procedure of one Amol Prabhakar Ingale. It is submitted that, the said statements sufficiently shows the involvement of the applicants in the alleged offence and as the offence is serious, this Court may not grant bail to the applicants.

9. I have perused the charge-sheet and the application.

10. As far as the deceased Prabhakar is concerned, the allegations are that all the eight accused persons including the applicants assaulted the deceased. No specific role is attributed to any of the accused.

11. Thus, in the said backdrop, if the Post Mortem report is perused, it does not support the case of the prosecution, as there are no corresponding injuries found on the person of the deceased. It is pertinent to note that no injury was found on the head of the deceased in column No. 17 of the Post Mortem report. Whereas, two injuries namely – (1) IV needle mark and (2) Old healed abrasion are found. The death was caused due to internal injury mentioned in Column No. 19.

12. In the said backdrop, on considering the fact that all other co-accused have been released on bail, who are similarly circumstanced, I am of the opinion that, in the light of the period of incarceration the applicants have undergone and the fact that the charge-sheet has already been filed, the applicants are entitled for grant of bail.

13. As far as the apprehension of the learned APP that if the applicants are released on bail, they may pressurize the prosecution witnesses or tamper the prosecution evidence, the same can be addressed by imposing certain stringent conditions.

14. Further nothing has been pointed out that, there is a possibility that, if the applicants are released on

bail, they will not be available for trial. In that view of the matter, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in connection with Crime No. 237 of 2021, registered with Police Station Dhamgangaon Badhe, Dist. Buldhana, for the offences punishable under Sections 302, 307, 324, 143, 147, 148, 149 of the Indian Penal Code, 1860, the applicants shall be released on bail on furnishing P.R. Bond of Rs.20,000/- each with one solvent surety in the like amount for each of the applicants.
- c) The applicants shall not enter into the territorial jurisdiction of Sarola Maroti, Tah. Motala-Dhamangaon Badhe, District Buldhana, till the culmination of the trial, except for trial.
- d) The applicants shall provide his address along with name of the nearby Police Station and shall attend the concerned Police Station on 1st and 16th day of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- e) Liberty is granted to State and the victim to apply for cancellation of bail, in case of breach of any condition or the applicants commit any serious offence.

- f) The applicants shall not tamper with the prosecution witnesses.

The criminal application is **disposed of** accordingly.

[ANIL S. KILOR, J.]