

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

CRIMINAL APPLICATION (BA) NO.1337/2021

Umesh @ Bandu s/o Gowardhan Bhande and another

...Versus...

State of Maharashtra, Through Police Station Officer, Police Station, Akot File,
Akola

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

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for applicants
Mrs. S.Z. Haidar, APP for non-applicant

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/02/2022

1. Heard Shri Sirpurkar, learned Counsel for the applicants and Mrs. Haidar, learned Additional Public Prosecutor for the non-applicant.

2. The applicants are arraigned for the offence punishable under Sections 302, 307, 324, 326 read with 34 of Indian Penal Code in Crime No.661/2021, registered with Police Station Akot File, Akola. The incident is dated 27/06/2021, the victim died on 28/06/2021, the date of arrest is 27/06/2021 and the chargesheet has been filed on 22/09/2021.

3. Learned Counsel for the applicants submits, that the relevant statement of Ku. Pratiksha Rajesh Bhande, (pg.58) would indicate that the applicants had no intention to cause death of the deceased, as the assault by pipe and stick was on the legs and the back, which are not vital parts of the body. The assault, which is the cause of death, is by one Vaibhav Ganesh Bhande, on the head by pipe, who had, after administering the blow, run away. It is after the said Vaibhav had run away, the applicants came to the spot and assaulted on the legs and back of the deceased. It is, therefore, submitted that the applicants, may be guilty of lesser offence, but certainly not one, to which the demise of the deceased can be attributed. It is further submitted that considering that the charge-sheet has already been filed, the applicants be released on bail on the conditions, which may be deemed appropriate.

4. Learned Additional Public Prosecutor for the non-applicant opposes the application, contending that the fact that the assault has been made by the applicants itself would indicate that there was intention to cause death. She further submits, that since the applicants are resident of the same village, there is every possibility of the applicants either tampering with the evidence or influencing the witnesses and therefore, the application be rejected.

5. The incident had taken place on 27/06/2021 at 2:00 p.m. in the afternoon, in which while the deceased Rajesh was returning home from his work one Vaibhav is stated to have come from behind him and assaulted the deceased on his head by iron pipe and had run away. Thereafter, the applicants had been to the spot and have assaulted the deceased, on his legs and back. The very nature of the assault by the applicants would be indicative *prima facie* for the purpose of considering this application that there may not be any intention on their part to cause the death of the deceased, who has passed away on 28/06/2021, as is indicated by the post-mortem report, which shows the cause of death as hemorrhage and shock due to multiple injuries. The nature of injuries, as indicated in column no.17 of the post-mortem report, indicates that except for injury no.1 which is on the head, which is attributed to Vaibhav, all the other injuries, are on the legs, from the knee and below, which *prima facie* substantiates the above contention. This being the position, I do not see any reason to further continue incarceration of the applicants, however, considering the apprehension expressed by the learned Additional Public Prosecutor, stringent conditions can be put. Hence, the following order.

ORDER

(i) The criminal application is allowed. The applicants, namely, Umesh @ Bandu s/o Gowardhan Bhande and Ganesh Bhandudas Bhande be released on bail for the offence punishable under Sections 302, 307, 324, 326 read with 34 of Indian Penal Code in Crime No.661/2021 registered with Police Station Akot File, Akola on their furnishing PR. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each and two solvent sureties of Rs.1,00,000/- each.

(ii) The applicants shall not enter the jurisdiction of Police Station Lakhonda (Bk.), Tq. and Distt. Akola, during the course of the trial.

(iii) The applicants shall also not tamper with the prosecution evidence and influence the witnesses, in any manner whatsoever. Any breach of these conditions, shall result in cancellation of the bail.

(AVINASH G. GHAROTE, J.)

Wadkar