

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

CRIMINAL APPLICATION (BA) NO.1380 OF 2022

ISHWAR S/O GUMANSING BHAIIDYA AND ANOTHER
VS
STATE OF MAH. THR. OFFICER IN CHARGE OF PS SONALA TAH.
SANGRAMPUR DIST.BULDHANA

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

Court's or Judge's Order

Shri H.R. Gadhia, Advocate for the applicants.
Shri N.R. Rode, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 21/12/2022

1. Heard.
2. The applicants are seeking bail in Crime No.90 of 2022, registered with Police Station: Sonala, District: Buldhana, for the offences punishable under Sections 302, 120B, 326, 323, 506, 143, 146, 147, 148, 149 and read with Section 34 of the Indian Penal Code.
3. In this case, the prosecution story is that on the intervening night of 13.5.2022 and 14.5.2022, the accused persons met at night and asked about the brother of the complainant and told him that they want to kill him. Thereafter, Naran Gumansingh Bhaydye and Suresh Rumalsingh Bhaydye caught hold the hands and gave a blow by stick on the head of the deceased. It is further

alleged that the other accused have also assaulted the deceased by fist and blows.

4. From the prosecution story, it is evident that the main allegations are against Naran Gumansingh Bhayde and Suresh Rumalsingh Bhaidya as against them a specific role is attributed.

5. Whereas, in the FIR, the applicants were not named. However, subsequently, when the statements of witnesses were recorded after five days, the witnesses disclosed the names of the applicants. Initially, therefore, the offence was registered only against the accused-Naran Gumansingh Bhayde and Suresh Rumalsingh Bhaidya and the names of other accused persons were subsequently added.

6. If the story of the prosecution is accepted on its face value, that all the accused persons, who are eight in number, assaulted the deceased, no corresponding injuries were found on the body of the deceased. The cause of death is head injury. From the charge-sheet, it is clear that the author of the said injury, were accused Nos. 1 and 2.

7. Thus, in the above referred circumstances, it creates doubt about the presence and active involvement of the applicants in the alleged offence. Even though, Section

149 of the Indian Penal Code has been invoked, no *prima facie* evidence against the applicants, that they were present at the spot with an intention to form an unlawful assembly with common intention to kill the deceased, is available.

8. Otherwise also, the only one blow on the head, *prima facie*, does not support the case as regards the intention.

9. In the circumstances, considering the fact that the applicants are in jail since 20/05/2022, coupled with the fact that the investigation is completed and the charge-sheet has been filed, I am of the opinion that with certain conditions, the applicants shall be released on bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicants shall be released on bail in Crime No. 90 of 2022, registered with Police Station: Sonala, District: Buldhana, for the offences punishable under Sections 302, 120B, 326, 323, 506, 143, 146, 147, 148, 149 and read with Section 34 of the Indian Penal Code, on furnishing P.R. Bond of Rs.25,000/- each with one solvent surety in the like amount for each of the applicants.

- c) The applicants shall not enter into the territorial jurisdiction village Sangrampur, Dist. Buldhana, till the culmination of trial, except for the trial or attending the Police Station.
- d) The applicants 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) The applicants shall not tamper with the prosecution witnesses.

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

JUDGE

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