

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.887 OF 2023
WITH APPLN/2206/2023 IN BA/887/2023**

1. Vishal s/o Ashok Koli
2. Vinod s/o Ashok Koli ...Applicants

Versus

The State of Maharashtra ...Respondent

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Advocate for Applicants : Mr. Gaikwad Amol Ratan
APP for Respondent/State : Mr. Y.G. Gujarati
Advocate for Complainant/Assist to P.P : Mr. Hemant Surve

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CORAM : S.G. MEHARE, J.

DATED : JULY 06, 2023

PER COURT:-

1. Heard learned counsel for the applicants, learned APP for the State and learned counsel for the complainant.
2. The applicants are seeking bail in Crime No.5 of 2023 registered with Marvad Police Station, District Jalgaon for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.
3. The applicants are seeking bail on the ground that the so-called eye witnesses came forward belatedly. Therefore, they may not be believed at this juncture. He would vehemently argue that immediately after the incident, eye witness Yogesh Hilal Koli was all along with the dead body. He had an enmity with the applicant; hence, he has falsely stated against the applicant. In the absence of

the so-called planted eye witnesses, there is no direct evidence against the applicant. The entire family of the applicant has been falsely arraigned in the crime. There are no allegations against the applicant that he had used the weapon to assault the deceased. The investigation has been completed. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

4. Learned APP and learned counsel for the complainant would submit that the deceased and the eye witness Yogesh had a telephonic conversation close to the time of the incident. The CDR supports the contention of the eye witness that the deceased had called him. He heard the noise on the telephone. Therefore, he went to the field with another eye witness. The applicant and his family were stealing the sand from Naala for which the deceased had obstructed. The deceased was mercilessly beaten and his private part was deadly affected. The tyre marks of the tractor available on the spot of the incident are the other circumstances which makes the prosecution case strong. The offence is grave and serious. Hence, he may not be granted bail.

5. Admittedly, the statements of the so-called eye witnesses were recorded belatedly. However to verify whether the deceased and the so-called eye witness had a telephonic communication as per the statement, the CDR was called. It supports the contention that he had a talk with the deceased some time before the incident. So the

possibility cannot be ruled that he had witnessed the incident. The accused were stealing the sand from the Naala that was causing disturbance to the land of the deceased and his family. While deciding the bail application, the Court has to see the *prima facie* evidence. The delay in recording the statement is subject to explanation and cross-examination of the witness during the trial. However, the Court after having gone through the relevant papers believed that there were eye witnesses to the incident and other circumstances corroborate the allegations. The deceased was mercilessly beaten with spade. He had serious injuries. The offence was grave. Hence, the applicant does not deserve bail. Hence, the following order :

ORDER

- i) The application stands dismissed.
- ii) Criminal Application No.2206 of 2023 is allowed.
- iii) Needless to state that these observations are restricted to bail applications only. The trial Court would not be influenced by these observations during the trial.

(S.G. MEHARE, J.)