

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1093 OF 2023

1. Gautam @ Gottam s/o. Bhika Damedhar, Age 26 years,
2. Samadhan s/o. Bhika Damedhar, Age 31 years,
3. Devidas s/o. Bhika Damedhar, Age 35 years,
All Occu. Labour, R/o. Mangrul, Taluka Sillod,
District Aurangabad .. Applicants

Versus

The State of Maharashtra .. Respondent

...
Advocate for Applicants : Mr. M. K. Bhosale holding for
Mr. Bhushan S. Borde
APP for Respondent : Ms. V. N. Patil-Jadhav
...

CORAM : S. G. MEHARE, J.

DATE : 31-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicants are seeking bail in C.R.No.0170 of 2023 registered with Sillod Rural Police Station, District Aurangabad, for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.
3. Firstly, the applicants are claiming bail on parity. The co-accused Bhaskar has been granted bail by this Court specifically observing that there are bare allegations against him that he took

away the sickle and wooden log allegedly used for the assault. There is no similarity and there are specific allegations against the present applicants. Hence, parity would not apply.

4. Further, it has been argued by the learned counsel for the applicants that the eyewitnesses who witnessed the incident, did not state specific role played by the applicants in the alleged incident. He would also argue that there were no CCTV footages though they were present at the time of incident, so that their innocence may be believed. The weapon allegedly used in the crime have been recovered. Nothing has been recovered from them. There is no material against the applicants, therefore, no purpose would be served by keeping them behind bars. Hence, they may be granted bail.

5. The learned A.P.P. would submit that though due to the disappearing the CCTV footages from the shops nearby spot of the incident, there are eyewitnesses to the incident. The report is very specific that soon after the message received from one Laxman Moze, the first informant went to the spot of the incident. That time, he saw the applicants running away from *nullah* from behind their home. She would also argue that the deceased made oral dying declaration to the first informant stating that the applicants assaulted him. The offence is serious. The investigation is in progress. Hence, the applicants do not deserve bail.

6. Perused the papers.

7. *Prima facie* there was evidence against the applicants that they were present on the spot of the incident. Secondly, the first informant saw the applicants running away from behind the house of co-accused Bhaskar Borde through nullah. The deceased had given oral dying declaration stating the names of the applicants specifically and alleging assault on him. He has specifically stated that he had seen the accused Shravan and Bhaskar. The enmity is double edged weapon. At this juncture, there is *prima facie* material against the applicants. The offence is serious. The investigation is in progress. Hence, that cannot be considered at this juncture.

8. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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