

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

**BAIL APPLICATION NO.1486 OF 2023
WITH
CRIMINAL APPLICATION NO.3203 OF 2023**

1. Sadanand s/o Gulabrao Gonde
Age: 32 years, Occu: Labourer,
R/o: Village Gayatrinagar, Jalna,
Tq. and Dist. Jalna
2. Pandharinath @ Guntya S/o Gulabrao Gonde,
Age: 35 years, Occu: and r/o above
3. Shivaji s/o Rambhau Gangavane
Age: 40 years, Occu: Labourer,
R/o: Tatewadi, Jalna
Taluka and Dist. Jalna

... Applicants

Versus

The State of Maharashtra
Through the In-charge
Police Station Officer,
Chandan Zira, Police Station,
District Jalna

... Respondent

...

Mr. Rajendra Deshmukh [Senior Advocate] a/w Mr. Vishal A. Chavan
i/f Mr. D. R. Deshmukh, Advocate for the Applicants
Mr. S. B. Narwade, APP for the Respondent/State
Mr. B. N. Gadegaonkar, Advocate for the Informant/Complainant

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 07.09.2023

Pronounced On : 20.09.2023

FINAL ORDER :-

1. Heard the learned Advocate for the applicants, learned APP for the State and learned Advocate for the informant.
2. The applicants are seeking regular bail in connection with Crime No.240/2021 registered with Chandanzira Police Station, District Jalna for the offences punishable under Sections 302, 307, 326, 323, 341, 143, 147, 148, 149 & 504 of the Indian Penal Code [for short 'IPC'] and Section 4/25 of Arms Act, 1959 [for short 'the Act'].
3. On the basis of information given by one Sunil Sahebrao Pawar, initially the offence punishable under Sections 307, 326, 323, 341, 143, 147, 148, 149 & 504 of IPC and Section 4/25 of the Act was registered. It is alleged in the report that, on 18/07/2021, the informant along with his elder brother, namely, Dilip went to Nutanwadi from Jalna to fetch clothes for family members. At about 5:00 pm, the accused – Gulabrao Gonde, his son – Pandharinath @ Guntya, his daughter and son-in-law – Shivaji Gangawane arrived at the spot and initiated assault on the brother of the informant i.e. Dilip. On arrival of police persons from Chandanzira Police Station, accused persons flee away seeing them. The brother of the informant i.e. Dilip had sustained injuries in the assault.
4. The informant along with Uttam Pawar took injured Dilip in a rickshaw and they were moving towards Hospital. However, when they reached at flyover/bridge of Samruddhi Mahamarg, the accused persons arrived there in a black Scorpio Jeep. Accused – Sadanand Gonde, Gajanan Gonde and two three

unknown persons alighted from the said Jeep. They were holding weapons in their hands. Apprehending attack, informant and Uttam Pawar ran away from the rickshaw leaving injured Dilip in the rickshaw. The accused – Sadanand Gonde assaulted on the legs of Dilip using a sword and the accused – Gajanan Gonde assaulted on the legs of Dilip using an iron rod. Other accused persons assaulted Dilip by fist and kick blows. Thereafter, the accused persons flee away in the Jeep. The informant found that the Dilip was severely injured and he was unconscious. He took him to the Government Hospital at Jalna, but looking to serious condition, he was referred to Deepak Hospital at Jalna. Thereafter, he was referred to Seth Nandlal Dhut Hospital at Aurangabad. While he was under treatment, the FIR had been recorded against the accused persons.

5. It appears that, the applicants were arrested in pursuance of the aforesaid crime on 23/07/2021 and they were remanded to P.C.R till 26/07/2021. The learned Sessions Court was pleased to allow their bail application vide order dated 29/07/2021. Similarly, the bail application of accused – Gulabrao Gonde has been allowed on the same day.
6. The injured Dilip died during the course of medical treatment. consequently, a graver offence under Section 302 of IPC was added. In view of addition of graver charge, prosecution moved an application seeking cancellation of bail granted to applicants. However, the learned Sessions Court dismissed the said application vide order dated 22/10/2021.
7. After completing the investigation, charge-sheet came to be

filed against in all six accused persons for the offences punishable under Sections 302, 307, 323, 341, 143, 1474, 148, 149, 504, 506 r/w Section 34 of IPC and 2/25 of the Act.

8. The informant / Sunil Sahebrao Pawar filed an application for cancellation of bail bearing No.193/2021 before this Court. After hearing both the sides, this Court allowed said application of the informant vide order dated 23/06/2023 and consequently cancelled the bail granted to the applicants by Sessions Court vide order dated 29/07/2021 with further liberty to the applicants to apply afresh for grant of bail on merit after they surrendered. In pursuance of the order of cancellation of bail, the applicants have surrendered themselves on 05/07/2023. Thereafter, they approached the Sessions Court with fresh application for grant of bail. The learned Sessions Judge vide his order dated 08/08/2023 rejected plea of applicants for grant of bail. Hence, the present bail application.
9. Mr. Rajendra Deshmukh, learned Senior Advocate appearing for the applicants would submit that the alleged incident is dated 18/07/2021 and the FIR has been lodged on 21/07/2021 while the deceased – Dilip was hospitalized. He would submit that previously on the information given by applicant no.1 – Sadanand, a Crime No.211/2021 was registered on 21/06/2021 against the deceased – Dilip, his brother (present first informant) and other three persons for the offences punishable under Sections 307, 326, 327, 323, 143, 147, 148, 149 and Section 4/25 of the Act. He would

therefore submit that the applicants have been falsely implicated in this crime.

10. Mr. Rajendra Deshmukh, learned Senior Advocate would further submit that the incident dated 18/07/2021 is in two parts. He would submit that initially at 5:00 pm, it is alleged that, accused – Gulab Gonde, accused – Pandharinath @ Guntya, accused – Shivaji and a lady accused are alleged to have assaulted Dilip. There is no allegation of use of weapon. The further incident is alleged to have taken place at 5:30 pm near flyover/bridge of Samruddhi Mahamarg. It is alleged that applicant no.1 – Sadanand was holding a sword in his hand and accused – Gajanan was holding an iron rod, other two three unknown persons are alleged to have participated in second part of the incident. So far as applicant no.2 – Pandharinath @ Guntya and applicant no.3 – Shivaji are concerned, they are not attributed presence or role in the second incident. He would further submit that the injuries suffered by the deceased are not on the vital parts of the body. Most of the injuries are contusions or abrasions, which indicate absence of intention to kill on the part of the assailants. Learned Senior Advocate would further submit that the applicants were granted bail vide order dated 29/07/2021 passed by Sessions Court. However, in view of the cancellation of bail by this Court vide order dated 23/06/2023, they have surrendered on 05/07/2023. During this period, they have not misused the liberty. He would therefore urge that the applicants be enlarged on bail.

11. Mr. Narwade, learned APP for the respondent/State so also Mr. Gadegaonkar, learned Advocate appearing for the informant/complainant vehemently opposes the application. They would submit that since the deceased – Dilip had suffered severe injuries, he was initially taken to Civil Hospital at Jalna, then Deepak Hospital at Jalna and then, he was referred to Seth Nandlal Dhut Hospital at Aurangabad. Thereafter, he died in the Government Hospital at Aurangabad. Therefore, there is delay in lodging the FIR. They would submit that the applicants are specifically named in the FIR. There are eye witnesses to the incident, who have specifically attributed role against the applicants. The postmortem report shows that deceased – Dilip has suffered as many as 37 injuries. The cause of death is attributed to the multiple injuries suffered by the deceased. The medical evidence concurs with the ocular evidence. They would further point out that this Court has cancelled the bail granted in favour of the applicants after considering their respective roles in commission of the offence. Therefore, they urge to reject the application.
12. Having considered the submissions advanced, apparently, the applicants herein were granted regular bail while FIR was lodged for the offences punishable under Sections 307, 326, 323, 341, 143, 147, 148, 149 & 504 of IPC and Section 4/25 of the Act. However, after addition of graver offence under Section 302 of IPC, the prosecution had applied for cancellation of bail. The said application was rejected. Thereafter, the informant had approached this Court seeking

cancellation of bail vide ACB No.193/2021. This Court allowed the said application vide order dated 23/06/2023 and cancelled the bail granted in favour of the applicants. By the said order, the applicants were directed to surrender before the Investigating Officer on or before 05/07/2023 and they were granted liberty to apply afresh for grant of bail on merit after being sent to Magisterial custody. The applicants have accordingly surrendered on 05/07/2023. Thereafter, they applied for grant of regular bail in pursuance of the liberty granted by this Court and their application has been rejected by the Sessions Court. It is pertinent to note here that the applicants were on bail since 29/07/2021 till 05/07/2023. During this period of almost two years, there is nothing to indicate that the applicants have misused their liberty.

13. Apparently, the delayed FIR dated 21/07/2021 narrates two separate incidents dated 18/07/2021. One at Nutanwadi at about 5:00 pm, wherein, the allegation is made that the accused – Gulab, accused – Pandharinath @ Guntya and accused – Shivaji assaulted the deceased – Dilip. It does not refer to use of any weapon. The second incident alleged to have taken place at about 5:30 pm near the flyover/bridge of Samruddhi Mahamarg. In that incident, applicant no.1 – Sadanand along with accused – Gajanan and two three unknown persons are alleged to have assaulted the deceased – Dilip using the sword and iron rod. In the that incident, no role is attributed against applicant / accused – Pandharinath @ Guntya and applicant / accused– Shivaji. The postmortem report shows multiple injuries but only one injury in the nature

of sutured wound on left foot of the deceased, which may be attributed to the use of sword. All other injuries are contusion and abrasions. Apparently, there is delay of about three days in lodging the FIR. It appears that, the statement of independent witness i.e. rickshaw driver, namely, Sachin Narayan Tidke is recorded on 25/08/2021. However, he has not given any version regarding assault or description of the assailants. All other witnesses appear to be interested and relatives of the first informant. Their statements are recorded after considerable delay. The statements of the witnesses recorded u/s 164 of Cr.P.C. gives improved version, wherein, again role of applicant nos.2 and 3 is sought to be introduced.

14. The careful scrutiny of the contents of FIR, the police statements recorded under Section 161 and then 164 statements before the Magistrate would show that there is improvisation on the material particulars. Apparently, applicant no.1 had lodged the FIR against the informant, deceased and their family members just one month before the lodging of the present FIR. The possibility of the false implication of accused persons or recording improvised version to implicate as many as family members of the accused cannot be ruled.
15. Considering the aforesaid aspects and particularly the fact that from 29/07/2021 till 05/07/2023, the applicants while on bail, have not misused their liberty, there is no impediment in releasing them on bail since the trial would take its own course. Hence, the case is made out for grant of bail.

16. It is clarified that, the observations made here-in-above are on prima facie consideration of the material only for the purpose of disposal of present application. Hence, the following order

ORDER

- (i) Bail Application is allowed.
- (ii) The applicants, namely, (1) Sadanand s/o Gulabrao Gonde (2) Pandharinath @ Guntya S/o Gulabrao Gonde (3) Shivaji s/o Rambhau Gangavane be released on bail in connection with Crime No.240/2021 registered with Chandanzira Police Station, District Jalna for the offences punishable under Sections 302, 307, 326, 323, 341, 143, 147, 148, 149 & 504 of IPC and Section 4/25 of the Act on furnishing P.B. of Rs.50,000/- (Rupees Fifty Thousand Only) each on the following conditions:
 - a) The applicants shall not tamper with the prosecution evidence/witnesses in any manner.
 - b) They shall not establish contact with any witnesses named in the charge-sheet.
 - c) They shall not indulge in the similar offence.
- (iii) Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE