

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1637 OF 2023

1. Ashok s/o. Lakha Koli, Age 52 years,
2. Sagar s/o. Ashok Koli, Age 22 years,
Both R/o. Mandal, Taluka Amalner,
District Jalgaon

.. Applicants
(Original accused)

Versus

The State of Maharashtra
Through the Police Station Marwad,
Taluka Amalner, District Jalgaon

.. Respondent

Mr. R. A. Shinde, Advocate for Applicants;
Mr. S. P. Tiwari, A.P.P. for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 20-09-2023

PER COURT :-

1. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent/State.
2. This is a successive bail application of the applicants seeking bail in C.R.No.005 of 2022 registered with Police Station Marwad, Taluka Amalner, District Jalgaon, for the offences punishable under Sections 302, 379, 201, 504 and 506 read with Section 34 of the Indian Penal Code.
3. Earlier the application for bail was not heard on merits. It was simply withdrawn. Hence, this application is considered as

fresh application.

4. The learned counsel for the applicants would submit that the so-called two witnesses are concocted and planted. There was inordinate delay of around two month in recording their statements. There were no incriminating circumstances against the applicants. He would further argue that the tractor driver in which the alleged stolen sand was to be carried stated that he had taken the tractor away from the spot of the incident. Hence, the prosecution story that the eyewitnesses witnessed the incident is improbable. They have been falsely implicated in the crime. They are languishing in jail for a long time. Hence, they may be granted bail.

5. Per contra, the learned A.P.P. would submit that the witnesses have explained the delay. Since they were frightened, they remain silent. They also did not have courage to go to the police station after the notice under Section 160 of the Code of Criminal Procedure. The way in which the offence committed was serious. The deceased was opposing the applicants for stealing sand from the *nullah* adjacent to his field. The nature of the injuries itself shows the aggressive role attributed to the applicants. Their role was active. The offence is serious. For no reason a man who was opposing the accused, has lost his life. Hence, they do not deserve bail.

6. It is true that the statement of the so-called eyewitnesses have been recorded belatedly. However, they have explained that out of fear they could not disclose the incident to the police. The incriminating material was also collected from the spot of the incident. The driver of the so-called tractor also disclosed the presence of the present applicants on the spot of the accident on the day of the incident. Whether their statements are concocted or not, would be considered on merits. However, *prima facie* evidence is available against the applicants. They have played active role in the brutal murder of the deceased with spade. The offence is obviously serious.

7. For the above reasons, the applicants do not deserve bail. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

rrd