

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1697 OF 2023**

1. Shri Akash @ Shankar Bhagwan Javare,
Age: 27 years, Occupation: News Reporter,
Resident of: Chaudhari Galli, Nandurbar,
Taluka and District Nandurbar.
2. Shri Bhagwan Girdhar @ Rohidas Javare,
Age: 55 years, Occupation: Labour work,
Resident of: Khondamali
Taluka and District Nandurbar. ..Applicants

Versus

The State of Maharashtra,
through the Officer in Charge
Nandurbar City Police Station,
Taluka and District Nandurbar ..Respondent

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Mr. Mukul S. Kulkarni, Advocate for the Applicants.
Mrs. P. V. Diggikar, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 10th OCTOBER, 2023.**

PER COURT:-

1. The applicants seek regular bail in connection with Crime No.230/2023 dated 09.04.2023 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Sections 302, 120(b), 201, 323, 324, 504, 506 r/w 34 of the Indian Penal Code and Sections 3, 4, 7, 25 and 27 of the Arms Act as well as Sections 37(1)(3), 135 of the Maharashtra Police Act.
2. The investigation was set in motion on the basis of the information given by Kailas Appa Pendharkar. He alleges that on 09.04.2023 one Akash Ravindra Ahire informed that someone has killed Krishna Pendharkar at Umapati Mahadev Temple. Immediately, the informant alongwith Akash rushed to the spot.

They noticed that one Shekhar was running towards Sakri Naka from Mahadev Temple. He informed that accused Swapnil Javare, Akash Javare, Sagar Javare and Bhagwan Javare were assaulting some one. Near Temple, Krishna Pendharkar was laying in pool of blood. The investigation progressed in pursuance of the aforesaid report. The applicants have been arrested on 10.04.2023 alongwith other accused persons. After completion of the investigation, charge-sheet has been filed. The prayer of the applicants for grant of bail has been rejected by the learned Sessions Judge vide order dated 23.08.2023.

3. Mr. Kulkarni, learned Advocate appearing for the applicants invites attention of this Court to the General Diary dated 09.04.2023. The information has been recorded at 15.18 hours that accused Swapnil Javare suo moto appeared in the police station and informed that he has killed Krisha Pendharkar and surrendered a revolver and knife, which were used for commission of offence. Thereafter, panch witnesses were arranged and japti panchanama was recorded. He would submit that the statement of witnesses recorded under Section 161 of the Criminal Procedure Code would show that there are allegations of assault to deceased by accused i.e. Swapnil only. No specific role is attributed against any other accused persons. He would further point out that the statements recorded under Section 164 of the Criminal Procedure Code are omnibus in nature and do not disclose specific role of the applicants in commission of the offence. He would submit that the entire material in the charge-sheet pin points the guilt only against accused no.1. The story has been subsequently developed to bring home some role against the applicants. He would invite attention of this Court to the dates of recording of various statements by which complicity of the applicants has been brought on record. He would also invite

attention of this Court to the mobile video transcript, wherein only accused no.1 is seen holding weapons of the offence. He would, therefore, submit that the applicants have been falsely implicated in the crime. The investigation in the matter is over. Further detention of the applicants would not be necessary. They are ready to abide by the conditions as imposed by this Court and hence, seeks release of the applicants on bail.

4. The learned APP vehemently opposes the prayer for grant of bail. She would submit that the statements of the witnesses clearly point out that all the accused persons were present on the spot and after incident they ran away. She would further submit that during the course of investigation, the incriminating articles are seized from the accused persons including the applicants. She would submit that the statements of the eye witnesses clearly names the applicants and speaks about their role in commission of offence. As such, she urges to reject the prayer of the applicants. She points out that the victim has suffered as many as 19 injuries, therefore, it is explicit that offence is committed by all the accused persons.

5. Having considered the submissions advanced, it is apparent that the first information regarding incident in question received to the police station at about 14.50 hours, when accused Swapnil Javare himself appeared in the police station and he disclosed about commission of murder of Krisha Pendharkar. He has also surrendered weapons of the offence. The General Diary entry is recorded at 15.18 hours. Thereafter, panchanama was arranged and the weapon of the offence alongwith blood stained clothes were seized. The investigation progressed. The statement of eye witness namely Parshuram Bhil, Krushna Bhil and Prakash Bhil dated 12.04.20223 recorded under Section 161 of the

Criminal Procedure Code show that only one persons was assaulting to deceased. No other accused is referred in those statements. The statement of some witnesses are recorded on 13.04.2023 onwards. Perusal of the aforesaid statements would show that there are omnibus allegations against the applicants regarding their presence at the time of incident. No specific role is attributed against them. Subsequently, on 24.05.2023 the statements of the witnesses have been recorded under Section 164 of the Criminal Procedure Code before the Magistrate. Sawant Dilip Saware states that Akash Javare inflicted injury to deceased using knife. Similarly, the statements of Vijay Salve and Kailas Pendharkar states about role of the accused Akash. However, no specific allegations made against applicant no.2-Bhagwan. Some of the statements merely attributes that Bhagwan was holding a stick and assaulted deceased. Apparently there is consistent improvisation in evidence during progress of investigation with a view to book applicants.

6. The postmortem report shows that as many as 19 injuries were found on the person of the deceased. Therefore, it can be sensed that more than one person might have involved in commission of the offence. The recovery panchanama shows that the knife is recovered from accused Bhagwan under Section 27 of the Indian Evidence Act. However, as per statement of witnesses he was holding stick at the time of alleged offence. There is no recovery of knife at the instance of accused Akash under Section 27 of the Indian Evidence Act. The seizure panchanama under Section 165 shows that a knife is recovered from his home. Considering the nature of the evidence available on record, from inception it can be observed that initially only role of accused no.1-Swapnil is attributed and later on role is sought to be attributed against the other accused persons. The video

transcript of the incident only refers to the role of accused no.1. It cannot be gathered that applicants were either present on the spot or participated in commission of offence. There is either inconsistency or omission in respect of the specific roles against the applicants. *Prima facie*, the evidence on record is bereft to bring home guilt against the applicants. The genesis of prosecution story appears to be shaken. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicants, Akash @ Shankar Bhagwan Javare and Bhagwan Girdhar @ Rohidas Javare be released on bail in Crime No.230/2023 dated 09.04.2023 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Sections 302, 120(b), 201, 323, 324, 504, 506 r/w 34 of the Indian Penal Code and Sections 3, 4, 7, 25 and 27 of the Arms Act as well as Sections 37(1)(3), 135 of the Maharashtra Police Act on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicants shall attend each and every effective date before the Trial Court.
 - c. The applicants shall not enter in the village Nandurabar till conclusion of the trial.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE