

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3753 OF 2022

1. Vishwas Vilas Jadhav

Age : 38 Years, Occupation : Agri,

R/o. : Narawane, Taluka : Man,

District : Satara.

2. Vishal @ Pandurang Vilas Jadhav

Age : 23 Years, Occupation : Agri,

R/o. : Narawane, Taluka : Man,

District : Satara.

...Applicants

vs.

The State of Maharashtra

[Through : Dahiwadi Police Station]

...Respondent

Mr.Siddheshwar Baba Kalel – Advocate for Applicant.

Mr.Y.Y.Dabke – APP for the Respondent-State.

Ms.Nilam Santosh Raskar – LPN 143 – Dahiwadi Police Station.

CORAM : S. M. MODAK, J.

DATE : 12th APRIL, 2023

P. C. :-

1. Heard learned Advocate for the Applicants and learned APP for the Respondent-State. Officer from Dahiwadi Police Station is present.

2. Both these Applicants are seeking regular bail in connection with C.R. No. 76 of 2021 registered on 17th March, 2021 for the offences punishable under Section 143, 147, 148, 149 and 302 of Indian Penal Code, 1860 [“IPC”]. The complaint was lodged by one Smt. Daya Suryakant Jadhav. She is the sister in law of the deceased Chandrakant Nathaji Jadhav. After investigation, the Police have filed charge-sheet against 8 persons. These two Applicants are amongst them. Charge-sheet is filed for the offences punishable under Sections 302, 143, 147, 148, 149, 324, 452, 323, 504, 427 of IPC.

3. Apart from that, there is also an offence registered with the same Police Station at C.R. No.75 of 2021. It is registered for various offences and one of them is offence under Section 302 of IPC. It was registered for the commission of a murder of one Vilas Dhondiba Jadhav. Said Vilas is the father of these two Applicants. Charge-sheet is also filed in that offence.

Grounds of Bail.

4. They have asked for bail on two grounds. One is parity and another is merits. This Court as per the order dated 25th November, 2022 passed in Criminal Bail Application No. 3382 of 2021 was

pleased to grant bail to four Accused persons. They are :-

- (i) Krishna Dhondiba Jadhav
- (ii) Sagar @ Sambhaji Shivaji Jadhav
- (iii) Sameer @ Samadhan Krishna Jadhav
- (iv) Shivaji Dhondiba Jadhav

It is said that the role of those Accused and that of present Applicants is similar.

Materials.

5. Learned Advocate for the Applicants has read over the averments in the FIR, supplementary statement of the First-Informant Daya and statement of four witnesses who have accompanied the deceased Chandrakant. Their names are as follows :-

- (i) Krishna Dhondiba Jadhav
- (ii) Akshay Satish Jadhav
- (iii) Deepak Vitthal Jadhav
- (iv) Shyama Bhosale.

Previous incidents.

6. Learned Advocate Shri.Kalel from the record has also narrated about the previous incidents. In that behalf, the statement of two

witnesses are relevant. They are as follows :-

- (a) Dhanaji Kisan Khatal – He is Talathi of village Narawane (Page 438).
- (b) Satyawar Dhondiba Jadhav – He is real uncle of the present Applicants (Page No.622).

7. With their assistance, I have perused those statements. It seems that the deceased Chandrakant (for whose murder present Applicants are charge-sheeted) has taken a public auction of a sand conducted in village Narawane, Taluka : Man, District : Satara. As per the statement of Talathi, it was allotted to him. Satyawar-uncle of present Applicants, was having some grudge. He complained to said Talathi about transport of sand in a tractor by the deceased. Talathi tried to pacify him to the best of his ability.

Incident.

8. On 17th March at about 10.30 a.m., the labourers of Satyawar were loading onion belonging to Haridas Katkar. In order to supervise that work, Satyawar had gone to the spot. He was obstructed by the deceased Chandrakant and other persons. Satyawar was also assaulted with fist and blows.

9. On this background, the First-Informant alleges that four

persons by name Jeevan Shivaji Jadhav, Vishwas Vilas Jadhav – Applicant No.1, Samadhan Krushna Jadhav, Krushna Dhondiba Jadhav went to the house of the First-Informant. The deceased was also residing there. They quarreled with deceased Chandrakant. They were possessing certain weapons. The Applicant Pandurang Vilas Jadhav was possessing rod used for iron spade. In the meantime, Vilas Dhondiba Jadhav – father of the present two Applicants along with others, including Co-Applicant Vishwas also came there. Applicant Vishwas was possessing stick.

10. First informant has further alleged that there was a quarrel in between the members of the party belonging to the deceased Chandrakanth on one hand and the members of the party belonging to the deceased Vilas on the other hand. These facts are disclosed from the particulars of the FIR and from the supplementary statement recorded on 23st March, 2021.

11. The injured witness Krushna was very much present in the house of Chandrakant on 17th March, 2021 at about 10.14 a.m. He has also stated about the incident on the similar line as stated by the First-Informant. Furthermore, he has stated that during that quarrel,

deceased Chandrakant was trying to assault Vilas that is rival side deceased with the help of a knife. However, somehow Vilas avoided that blow. During that time, by way of retaliation, deceased Vilas gave blow of an axe on the deceased Chandrakant. He died due to injuries.

12. At the same time, present Applicant Vishal assaulted the witness Shyama alias Ajinkya Bhosale with the help of stick. Whereas, Applicant Vishal assaulted Deepak Jadhav with the help of a wooden rod of iron spade. Similar are the statements of other three witnesses.

Injury Certificates.

13. My attention is invited to the injury certificates. They are on Page Nos.207 to 219. It consists of :-

- (a) the certificates of the injured in the present offence
and
- (b) the certificates for the injuries caused to present two Applicants.

It is true that Krishna has not received any injury. His certificate is on Page No.207. Whereas, Ajinkya has only received simple injuries due to the assault by the Applicant Vishwas. Whereas, the certificate of

another injured Dipak is on Page No.210. He has also received simple injuries. There is allegation that he was assaulted by the Applicant Vishal.

14. It is also true that present two Applicants have also received injuries.

15. My attention is also invited on behalf of the applicants to the order dated 22nd February, 2023 passed by this Court in Criminal Bail Application No.2985 of 2022. This Application is in counter FIR.

Submission by learned A.P.P

16. As against this, learned APP submitted that there are specific allegations against these Applicants. Not only that they were possessing weapons, but they have also used it and there are injuries caused to two witnesses. He further submitted that even though there is no allegation that these two Applicants have given a blow on the deceased Chandrakant due to which he died, the provisions of unlawful assembly and rioting are invoked and hence, these two Applicants are also liable vicariously. He submitted that the role of the Applicants released in Criminal Bail Application No.3382 of 2021

is different. Learned APP pointed out that there is previous offence bearing C.R. No.196 of 2017 registered against the Applicant Vishwas Vilas Jadhav under Sections 143, 147, 148, 149, 324, 323, 504 and 506 of IPC.

Observations.

17. It is true that when there are counter FIRs given by the parties against each other, the Court is required to assess that material with the different approach. So to say, when there is FIR from one side only, the bail application has to be decided from different angle. When there are counter FIRs, one party is making allegation against another party and another party is also making allegation against the first party. It is true that at the bail stage, Court is not supposed to decide amongst those two parties who is at fault/aggressor. Court is required to assess the material prima facie.

18. From the above, it can be said that even though these two Applicants were very much there as both are injured, there is no allegation that they individually have given a blow to the deceased Chandrakant. No doubt, the provisions of vicarious liability are invoked, I intend to give benefit to these two Applicants. It is for the

reason that there is also counter FIR and in which there is a death of Vilas father of these applicants. Furthermore, this Court has granted bail to the four Applicants. Merely weapon is different, it does not mean that roles are different. So, I intend to grant bail to these two Applicants.

19. Hence, following order :-

ORDER

- (i) Application is allowed.
- (ii) Applicants namely :- (i) Vishwas Vilas Jadhav and (ii) Vishal @ Pandurang Vilas Jadhav be released on bail in connection with C.R. No. 76 of 2021 in Sessions Case No.36 of 2021 registered with Dahiwadi Police Station – Satara on furnishing personal bond and surety bond of Rs.25,000/- each.
- (iii) Applicants to give attendance to Dahiwadi Police Station on first Saturday in a month from 11.00 a.m. to 01.00 p.m. for three months.
- (iv) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.
- (v) In case of breach of any of the conditions, the bail of the Applicants is liable to be cancelled after hearing.

20. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

21. Application is disposed of in the aforesaid terms.

22. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]