



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO. 2090 OF 2023

- 1) Santosh Shivram Kolhe
- 2) Vishal Ashok Kolhe
- 3) Vikas @ Vickky Ashok Kolhe

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Shri R. S. Deshmukh, senior advocate i/b
Mr. Devang R. Deshmukh, Mr. Vishal Chavan and Ms. Rakshanda
Jaiswal

APP for Respondents: Mr. Satish A. Gaikwad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 30th APRIL, 2024.

PER COURT :-

1. This is an application for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 240 of 2022 registered with Kinwat police station, District Nanded, for the offences punishable under Sections 302, 307, 323, 324, 326, 143, 147, 148, 149, 504, 506 r.w. 34 of the I.P.C. Their application with similar prayer below Exh 13 in Sessions Case No. 53 of 2023 came to be rejected by the learned Additional Sessions Judge-3, Nanded, vide order dated 19.08.2023.

2. The informant averred in the report that on 12.12.2022 at about 10.30 a.m. when he went to the shop of one Shrikant Kacharlawar, he took him hurriedly to the Bhoigalli of Kinwat city. In front of the house of one Santosh Kolhe, he saw that all these applicants and

others were assaulting Bandu Kacharlawar by stone and wooden sticks. The said Bandu Kacharlawar sustained injuries to his head. Shrikant was convincing them but the applicants were not ready to hear him. They said that how the said Bandu is demanding back the premises given on rent. That time, applicant No.3 assaulted the informant by stick. Some peoples gathered there. These applicants threatened him, abused him and ran away. Shrikant and Bandu were taken in the hospital and on 27.12.2022 Shrikant succumbed to the injuries. The report was immediately lodged.

3. Learned senior advocate for the applicants submitted that there is variance in the statements of the witnesses and they are not specific and certain as to which applicants assaulted by which weapon to the injured and by which injury the injured succumbed. The applicants have no criminal antecedents. The trial will take a long period. The further custody of the applicants is not necessary. Leaned senior advocate further pointed out the post mortem report, injury certificate and the statement of the witnesses. Learned senior advocate submitted that two accused persons are granted bail and the applicants be released on the ground of parity. He submitted that the applicants will not flee away from the trial. It is lastly prayed to allow the application.

4. Learned A.P.P. for the respondent-State has strongly opposed the application and submitted that the applicants are involved in

serious crime. The applicants not only assaulted the informant but also intervened in the quarrel, wherein the informant sustained injuries to his legs. There is evidence of injured witness who was also assaulted by the applicants and other eye witnesses. If the applicants are released on bail, they will certainly pressurize the prosecution witnesses and tamper with the evidence. It is lastly prayed to reject the application.

5. Perused the charge sheet, particularly the statements of eye witnesses. Learned senior advocate for the applicants though submitted that the clothes on the persons were not stained with blood, however, the blood stained clothes are seized at the instance of the applicants. The incident took place on account of handing over of the premises given on rent. The death is occurred because of serious assault made by the applicants. The involvement of the applicants in the crime, *prima facie*, shows that they have intentionally assaulted three persons. Some of the witnesses have stated different weapons in the hands of the applicants at the time of assault but evidence of sterling quality is always expected in each and every trial. It is well settled that the accused is not entitled for benefit of doubt but accused is entitled for benefit of reasonable doubt. Needless to mention that reasonable doubt is doubt which unearths the prosecution case so as to disbelieve its case totally. Only because of deficiency with regard to weapons in the hands of the accused and on that ground, it cannot be inferred that the

applicants are falsely implicated in the crime. Considering peculiar set of facts, the applicants if released on bail, will certainly pressurize the prosecution witnesses and tamper with the evidence. Therefore, the arguments of learned senior advocate for the applicants cannot be accepted. As far as the ground of parity is concerned, the role of the accused persons who are granted bail are not mentioned in the F.I.R. and their role is not specified.

6. As far as these applicants are concerned, their names are mentioned in the F.I.R. with specific role that they have assaulted by stone and wooden sticks for which Shrikant succumbed to the injuries. Considering the serious nature of the crime for which the life imprisonment can be imposed, the applicants are certainly not entitled for bail as per the law laid down in the cases of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559, and Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684.*** In view of the above reasons, the application deserves to be rejected.

7. However, considering the fact that the applicants are behind bars for more than one year, the trial deserves to be expedited. Hence, the following order:-

- I) The application is rejected.

- II) The Trial Court is directed to conduct the trial as expeditiously as possible and in any case within one year from today. Needless to mention that it is a sessions trial and word “sessions” means once it is started it shall not be stopped till it is concluded.
- III) The Trial Court is further directed not to grant adjournments if it is prayed either on behalf of the prosecution or the defence unless there is extreme urgency or reasonable ground. If the accused are not produced, the Trial Court may call the jail authority and escort party and warn them by passing an order accordingly by giving one opportunity to them to produce the accused i.e. under trial prisoners continuously. If it is not followed then the Trial Court may proceed against them as per Chapter X of the Indian Penal Code for contempt of lawful authority etc.. If any accused who is on bail is not appearing for trial, then the Trial Court may proceed to cancel their bail. If the accused, advocates for accused are not cooperating the Court for conducting the trial as expeditiously as possible, the Trial Court may impose heavy costs on the concerned accused.
- IV) The Trial Court is expected to conduct the trial on day to day basis or in any case at least twice or thrice in a week in view of peculiar word “session”.
- V) If the trial is not concluded within one year from today, the applicant is at liberty to file application for bail before the trial Court.

(SANJAY A. DESHMUKH, J.)