



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 BAIL APPLICATION NO. 2249 OF 2023

1. Anna Kisan Kakad
2. Arvind Prakash Patil

..APPLICANTS

-VERSUS-

The State of Maharashtra

..RESPONDENT

...
Advocate for Applicants : Mr. Abhaysinh K. Bhosle
APP for Respondent/State: Mr.Satish A. Gaikwad
Advocate for assist to P.P.: Ms. Patel Medha Pramod
...

CORAM : SANJAY A. DESHMUKH, J.
DATED : 8th FEBRUARY, 2024.

PER COURT :-

1. The applicants are seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicants have been arrested in connection with crime No.0548 of 2021 registered with Jillha Peth Police Station, Dist. Jalgaon, for the offences punishable under Sections 143, 147, 302, 201 of the Indian Penal Code on the allegations that the applicants have assaulted inmate of the jail, who later on died.

2. It is averred in the report that the applicants have assaulted the husband of the informant, who was jail inmate of Jalgaon jail. It is

alleged that on 10.09.2020, the husband of the informant was sent in the judicial custody. Informant went to meet her husband on 11.09.2020 and met the peon of jail namely Kavita Savale. That time, she told that her husband is 'Ok'. When she came back to the house at about 1.30 p.m., she was informed by Deepak Jagtap, her neighbourer that her husband is died, which he heard from the Cabin of PSI More from City Police Station, Jalgaon. Informant immediately went to Jalgaon jail with Gajanan Patil and auto rickshaw driver Gopal. That time, she was informed that her husband was not feeling well. That time, the Police Officer informed the informant that her husband Chinya was very serious and she was directed to go to Godavari hospital. She went there. He was admitted in emergency ward. He was lying on the stretcher. Doctor told her that he is no more. Informant noticed some injuries on the person of her husband particularly his eyes etc. His clothes were teared with mud and those were torn. His entire body was wet. There were injuries on his back having yellow and green colour. His wrist was broken. There were red and black colour injuries to his left eyes. Informant alleged that the Superintendent of Jail and jail staffs assaulted her husband and committed his murder during the jail custody. Therefore, she made complaint, however, the report was not immediately lodged. The postmortem was conducted and 21 injuries were found. A.D. was registered accordingly and thereafter, the learned Judicial Magistrate,

First Class conducted the inquiry. That inquiry was conducted on the complaint of the complainant. In the inquiry prima facie, it was found that the husband of informant was assaulted, and therefore, he died. Thereafter, FIR was registered.

3. The learned advocate for the applicants submitted that Chinya was addicted to liquor. He was under influence of liquor and having symptoms of withdrawal there. Therefore, he was not properly behaving. It was duty of the applicants to control him. The applicants never assaulted him. Chinya was causing damage to the jail property and he become curious. It is lastly submitted that the applicants have roots in the society. They will not flee away from the trial. Trial would take long period. Considering delay caused for lodging the report, he lastly prayed to allow the application.

4. The learned APP for the State and the learned advocate for assist to prosecution Ms.Patel Medha Pramod submitted that the applicants have assaulted Chinya, who was inmate in the jail. Witnesses have specifically stated how the applicants assaulted him, and therefore, Chinya died in that incident. The complaint was immediately lodged by the informant, however, due to the inquiry there was delay for lodging the report. The postmortem report is pointed out. The statements of the witnesses are also pointed out.

Considering all these facts, it is lastly prayed to reject the application.

5. Perused the charge-sheet, particularly the statements of eye witnesses. There are two types of statements of the witnesses, some are saying that the applicants have beaten Chinya in that incident and some have stated that the applicants have not assaulted or beaten Chinya. That is a matter of evidence and meticulous consideration of the evidence at this stage is not necessary. No doubt, there are 21 injuries, the learned advocate for the applicants pointed out the letter dated 08.09.2020, in which it is mentioned that the witnesses, who have given the statements against these applicants proposed to be transferred from Jalgaon jail to Jalna jail. Therefore, there was grudge in their mind, and therefore, they have given such statements. The said letter dated 08.09.2020 is taken on record and marked as "X-1" for identification.

6. The learned advocate for the assisting to the prosecution has submitted the authority of ***Rammi Alias Rameshwar Vs. State of M.P.*** reported in **1999 AIR SC 3544**, in which the Hon'ble Supreme Court in para nos.24 and 25 has held as under :-

"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an

untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below :

“155. Impeaching credit of witness.- The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him -

(1)-(2) ***

(3) by proof of former statements

inconsistent with any part of his evidence which is liable to be contradicted.”

7. Nobody will dispute the ratio laid down in the above case, however, facts of each case are distinguishable. It is pointed out that Petras Josef Gaikwad, the Superintendent of Police, Jalgaon jail requested to transfer these witnesses inmates of jail to Jalna jail. No doubt, the applicants are arrested in the serious crimes. However, the applicants have roots in the society. They will not flee away from the trial. Trial would take long period. Considering the report, the postmortem report as well as statements of the witnesses and facts and circumstances of the case, the custody of the applicants is not necessary as charge-sheet is filed. The application, therefore, deserves to be allowed on certain conditions. Hence the following order :-

O R D E R

- I. Application is allowed.
- II. The applicants in connection with crime No.0548 of 2021 registered with Jilha Peth Police Station, Dist. Jalgaon, for the offences punishable under Sections 143, 147, 302, 201 of the Indian Penal Code be released on bail on furnishing personal bond of Rs.50,000/- each with one surety of the like amount by each of them on following conditions:-

- a) The applicants shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.
- b) The applicants shall not contact the witnesses in any manner.

(SANJAY A. DESHMUKH, J.)

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