



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.753 OF 2023
(Ashabai Sainath Badgujar and anr. Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. B. Dafle, Advocate for the applicants.
Mr. A.B. Badar, APP for the State.
Mr. N.B. Kalwaghe, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 11, 2024.

By this application, the applicants are seeking bail in connection with Crime No.269/2022 registered with Police Station Dhad, District Buldhana for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code.

2. The applicants are arrested on 30/10/2022. Since then he is behind bar.

3. The accusation against the present applicant is on the basis of report lodged by Vilas Sheshrao Jadhao who alleged that he and his father are the owners of Gat No.26 admeasuring 41 R and the agricultural land of the present applicants is adjacent to their land. There was a previous dispute between them. On 29/10/2022 at about 10:00 p.m. his father had been to the agricultural field Gat No.26 for watering the crops. At about 5:00 p.m. he heard the shouts of his father, therefore, he immediately rushed towards him and saw that present applicants caught hold his father and the co-accused Samadhan Pandit Jadhao has given a blow of knife on his person, due to which his

father sustained grievous injuries and fell in the pool of blood and subsequently succumbed to the death. On the basis of said report, police have registered the crime against the present applicants.

4. Heard learned Counsel for the applicants. He submitted that as far as present applicants are concerned only role attributed to them is that they caught hold the deceased and thereafter co-accused has given the blow. He submitted that now investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required considering their role. He also invited my attention towards the supplementary statement of the complainant which shows that only general statement is made that his father was assaulted by the present applicants and there is no allegation that present applicants have caught hold the deceased at the relevant time.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that in furtherance of common intention both the applicants caught hold the deceased and co-accused Samadhan gave a repeated blow on the person of the deceased and deceased succumbed to the death. He invited my attention towards the various statements of the witnesses as well as postmortem report and submitted that deceased has sustained as many as seven injuries and cause of death is hypovolemic shock due to excessive blood loss. The internal injuries are sustained shows the force which is used by the co-accused

while assaulting the deceased. He submitted that *prima facie* case is made out against the present applicants. In view of that, application deserves to be rejected.

6. Learned Counsel for the original complainant endorsed the same contention and submitted that considering the circumstances in which the alleged incident has taken place, the present applicants who caught hold the deceased, and therefore, the co-accused could execute the act of assaulting the deceased. Thus, the act of the present applicants in furtherance with the common intention, the gravity of the offence and the apprehension that the applicants could tamper with the prosecution evidence, bail application deserves to be rejected.

7. I have heard learned Counsel for the parties. Perused the investigation papers. As per the recitals of the FIR the alleged incident has taken place at about 5:00 p.m. The allegation against both the applicants is that they caught hold the deceased, and therefore, the co-accused executed the act of giving blow. During investigation, the Investigating Officer has also recorded the statements of other witnesses also. The statement of one Gautam Raibhan Bawaskar is also recorded. His statement shows that at about 5.00 p.m. he had seen the applicant No.1 – Asha and her sister were proceeding towards the house from their agricultural land. The statement of this witness is also recorded under Section 164 wherein also he has stated that at about 5.00 to 5:15 p.m. he had seen

applicant No.1 along with her brother and sister proceeding towards their house. Considering the said statement and no overt act is attributed to applicant No.1. Moreover, from this statement her presence at the spot of incident, at the time of the incident is also in question. Now, the investigation is already completed and charge-sheet is already filed. In view of that, the application deserves to be allowed partly. Accordingly, I proceed to pass the following order :

- (i) The application is partly allowed.
- (ii) The prayer of applicant No.2 for grant of bail is hereby rejected.
- (iii) Applicant No. 1 - Ashabai Sainath Badgujar in connection with Crime No.269/2022 registered with Police Station Dhad, District Buldhana for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The applicant No.1 shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)