
(2021) 12 BOM CK 0059

In the Bombay High Court

Case No : Bail Application No.3127, 3610 Of 2021, Interim Application No.2445 Of 2021

Prabhakar Devba Gharge And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 201, 302, 302

Citation : (2021) 12 BOM CK 0059

Hon'ble Judges : V. G. Bisht, J

Bench : Single Bench

Advocate : Shirish Gupte, Manoj Mohite, Vaibhav Gaikwad, Dilip Bodake, Ashok Mundargi, Dilip Bodake, P. P. Shinde, Sanjeev Kadam, Vaibhav Jagdale, Malojirao Deshmukh

Final Decision : Dismissed

Judgement

V. G. Bisht, J

1 The present applications have been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No.80 of 2021 registered with Police Station Vaduj, Satara, for offences punishable under Section 302, 143, 147, 148, 149, 323 and 201 of the Indian Penal Code (IPC).

2 Interim Application No.2445 of 2021 filed by the intervenor is allowed to the extent of assisting the learned APP and stands disposed off.

3 The prosecution case in nutshell is that deceased Jagdeep Thorat was working with Khatav Man Taluka Agro Processing Ltd. Padal Sugar Factory ("factory" for short) as a General Manager (Processing). An enquiry was conducted in respect of theft of sugar from the factory and the deceased was one of the suspect along with others. The prosecution alleges that on 10th March 2021, in between 5.00 p.m. to 8.00 p.m., first in the applicant no.1's cabin and thereafter in Manoj

Ghorpade's cabin, the applicants and other accused assaulted deceased Jagdeep Thorat with fist and kick blows, fibre sticks and sugarcane sticks, as a result of which, he sustained serious injuries. At about 8.30 p.m., deceased's wife and brother-in-law Vikram Patil are stated to have taken the deceased home and on the next day he was taken to hospital and on admission, was declared dead.

4 It then appears that on 11th March 2021, U.B.Mane, Police Head Constable, who was on duty at Karad Police Station received letter from Dr.Ravindra More of Karad Hospital at Karad informing that deceased was brought in hospital in an injured condition with a history of severe injuries due to assault which had taken place in the factory on 10th March 2021 between 5.00 p.m. to 8.00 p.m. In view of unnatural death, ADR was registered and enquiry was entrusted to Police Sub-Inspector of Karad Police Station. On the basis of observations in the enquiry, Officer of Karad City Police Station registered the offence vide C.R.No.176 of 2021. As the offence took place within the jurisdiction of Vaduj Police station, the requisite papers along with letter were forwarded to Vaduj Police station.

5 The informant, on the basis of copies of Medico Legal Certificate and other documents and the information disclosed from Vikram Patil (brother-in-law of deceased) lodged the First Information Report (FIR) vide C.R.No.80 of 2021.

6 Mr.Shirish Gupte, learned senior counsel for the applicant in Bail Application No.3127 of 2021 submits that from the statement of witnesses it would be seen that there was no intention to cause death and therefore it cannot be termed as a homicidal death. The learned senior counsel also invited my attention to the statement of Vikram Aakaram Patil and would suggest that no specific role is attributed to the present applicant.

7 Similarly, Mr.Ashok Mundargi, learned senior counsel for the applicant in Bail Application No.3610 of 2021 has more or less supported the submissions advanced by Mr.Shirish Gupte, learned senior counsel for the applicant in Bail Application No.3127 of 2021 and also invited my attention to the statements of witnesses and pointed out how improvement is made subsequently during the course of recording of statement. The learned senior counsel also invited my attention to the postmortem report and pointed out the injuries. All injuries were in the nature of contusion and therefore it cannot be said that the death in question is homicidal.

8 Smt.P. P. Shinde, learned APP, on the other hand, with the assistance of Mr.Sanjeev Kadam, learned counsel for the intervenor, opposed the submissions by contending that not only the deceased was detained and confined in the chamber of applicants but was severely assaulted with the help of other accused. The learned APP also placed reliance on postmortem report and forcefully submitted that the cause of death was the injuries sustained by the deceased. Even according to the learned APP, the deceased had apprised the witnesses that he was severely beaten by the applicants and other accused. There being no merit in the applications, the same are liable to be rejected.

9 Perused the investigation papers. The first statement is that of Vikram Aakaram Patil - brother-in-law of the deceased. His statement shows that it was recorded on 11th March 2021 wherein he disclosed that when he went to the factory, he found deceased in a room, having sustained severe injuries. According to him, on being enquired, the deceased told him that he and other employees were beaten by Manoj Ghorpade, Sangram Ghorpade (applicant in B.A.No.3610 of 2021), Sunny Kshirsagar, Prabhakar Gharge (applicant in B.A.No.3127 of 2021) and other 10 to 12 persons, by means of fist blows and sticks. This witness also noticed blue-black marks on deceased's back, thighs and hips. However, it appears that his supplementary statement was recorded on 14th March 2021, which is at page no.215 in Bail Application No.3610 of 2021, wherein according to this witness, deceased had disclosed that accused Manoj Ghorpade, Sangram Ghorpade (applicant in B.A.No.3610 of 2021), Prabhakar Gharge (applicant in B.A.No.3127 of 2021), Mahesh Gharge, Sunny Kshirsagar and others had assaulted him by means of iron rod, iron pipe, fibre sticks, wooden sticks and by means of stones.

Thus, there appears to be some inconsistency between two statements.

10 The next statement is that of Sagar Ashok Phuke, who also states that when he along with others went to the chamber of deceased, he was not in a position to get up. They lifted him. The deceased then told that accused Manoj Ghorpade, Sangram Ghorpade (applicant in B.A.No.3610 of 2021), Mahesh Gharge, Sunny Kshirsagar, P.A.Anjankumar and Mama had beaten him by means of fibre sticks, sugar cane, iron rod. He even saw those weapons lying there.

11 This takes me to the postmortem report. It is seen from Column No.17 of the postmortem report that there were in all sixteen injuries. These injuries were in the nature of contusions and all over the body. The cause of death given by the concerned Medical Officer was haemorrhagic shock due to multiple contusions as a result of hard and blunt impacts (unnatural). As far as the contention of learned senior counsel for applicants that the death in question cannot be termed as homicidal death is concerned, in my view, the same will be decided by the learned trial Court at the time of trial. However, the injuries noted during the course of postmortem were certainly the reason and cause of death which is clear from the opinion expressed by the Autopsy Surgeon.

12 I have also pointed out that there are minor discrepancies between two statements of prosecution witness, namely, Vikram Patil (brother-in-law of the deceased). However, the fact remains that there is statement of another eye witness, namely, Sagar Ashok Phuke, to whom the deceased had given the names of accused and the assault perpetuated by them by means of weapons mentioned therein.

13 The learned senior counsel for the applicants claimed parity on the ground that one of the co-accused is already released on bail by this Court (Coram : Revati Mohite Dere, J.) vide order dated 17th September 2021. In my view the

ground of parity cannot be claimed as the name of the applicant therein (Bail Application No.2667 of 2021) was not taken by the eye witnesses.

14 In my considered opinion, there is sufficient and overwhelming evidence on record to point out the involvement of applicants in the offence. I do not find merit in the applications. Hence, the following order :

ORDER

The applications are rejected.