

**SESSIONS CASE NO.103/2018**

Bajirao @ Subhash Sajan Pawar

-versus-

The State of Maharashtra

**Order Below Exh.6**

Accused Bajirao Pawar has sought bail under Section 439 of Cr.P.C. in connection with Crime No.75/2018 registered with Devpur(w) police station for the offences punishable under Section 302,307,341,201, 120(B),109,143,147,148,149 IPC., Section 4, 7/25, 25(1)(A) of Arms Act and Section 37(1)(3) r/w. 135 of The Bombay Police Act.

02. In short, facts of the case are as under;

This is a case of double murder on 08-06-2018. There were bickerings and disputes between two sides laid by accused Bajirao Pawar and deceased Raosaheb Patil. Close relatives of both of them were aware of the dispute and under currents. On 08-06-2018 informant Prashant Patil who is younger brother of deceased Raosaheb received information from Hitesh Devre that accused Rhushikesh Patil followed him. Hitesh proceeded to give medicines to deceased Raosaheb so informant Prashant had suspicion of such information of pursuit and he immediately started to meet his brother Raosaheb. He was accompanied by his other relatives.

03. When they were proceeding in front of the house of accused Jayraj Patil, they found that accused Gaurav, Jayraj, Rhushikesh, Sonu @ Vaibhav, Harshal @ Dadu, Bhupesh @ Bhupendra and Bhushan intercepted deceased Raosaheb, his son Vaibhav and Harish Shinde while they were proceeding in Scorpio

vehicle. Some witnesses saw that aforesaid accused persons committed brutal assault on Raosaheb and Vaibhav with deadly weapons like sword, scythe, Kukri and iron rod etc. The informant partly saw the incident. However the other witnesses saw the entire incident. The accused persons dealt number of blows on vital body parts of Raosaheb and his son Vaibhav who succumbed to the incident. Both were taken to the hospital for medical treatment. Vaibhav was declared dead on arrival and Raosaheb died after some time. Prashant registered FIR at about 00-58 hours on 09-06-2018.

04. Offence came to be registered at C.R.No.75/2018 and investigation commenced. Accused were arrested in due course. After completion of investigation chargesheet was submitted. After committal the case has been assigned to this Court. Accused Bajirao was arrested on 09-06-2018.

05. The State has opposed bail application on various grounds by filing say Exh.7. The first informant has opposed the bail application by filing his say Exh.8. Heard both sides at length.

06. Ld.Adv.Shri.N.P.Mehta for the accused has submitted that name of accused Bajirao is not mentioned in FIR as assailant. He was not present on the spot. There is no evidence as to conspiracy to implicate the accused. Police relied on phone call of only one accused to implicate the present applicant in the offence. CDR of the cell phone of present accused does not reveal the phone calls as alleged. There is no other material on record showing involvement of the accused in offence. Investigation is over. Accused is permanent

resident of Dhule. He is ready to abide by conditions of bail.

07. Ld.PP Shri.D.Y.Tawar has submitted that present applicant is the mastermind of the offence. He is the main conspirator. He was on inimical terms with the deceased and he hatched the conspiracy to kill Raosaheb. While executing his orders other accused persons killed Raosaheb and his young son Vaibhav who was recently married. He has submitted that CDR of present accused show that he is well connected with various politicians as well as high ranking police officers with whom he had frequent phone conversations. Statements of witnesses show that present accused is involved in number of criminal activities in Dhule city and he works as linchpin taking advantage of the fact that he runs Pavanputra Vyayamshala in Dhule and number of youths work for him. FIR is lodged promptly. Photographs of the dead bodies show the brutality of assault. Statements of various witnesses show that present accused hatched conspiracy of killing. After rejection of earlier bail application there is no change in circumstances.

08. Ld. Advocate for first informant Shri.N.G.Dusane has submitted that CDR of present accused shows that after the incident he was in touch with various influential persons till 11-30pm. Copy of bail application No.490/2018 was not filed to suppress the fact that there is no change in circumstances and same points were canvassed earlier. Three more accused are recently arrested. Hence, investigation is going on. Henchmen of the applicant are threatening family of informant and deceased for which police complaints have been filed.

09. It is the case of brutal double murder. Brutality can be seen from the manner in which assault is committed and number of injuries sustained by both deceased. Deceased Raosaheb sustained 17 injuries on vital body parts and deceased Vaibhav sustained 16 injuries. The incident took place in broad day light at about 6-00pm and in residential and commercial area. As far as present accused is concerned, admittedly he was not present on the spot. He is allegedly the mastermind and main conspirator. Shri.D.Y.Tawar has submitted that while considering the case of conspiracy the case of main conspirator has to be considered more seriously than the other perpetrators. One has to keep in mind that direct evidence of conspiracy is seldom available. He has cited number of rulings where either bail is refused or canceled to main conspirator. He has relied on following citations.

1. **Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr.2012 AIR SCW 5567.**
2. **Lokesh Singh v. State of U.P. & Anr. 2009 CRI.L.J. 369.**
3. **Gopikishan s/o. Madhukar Mujaria Vs. State of Maharashtra 2009 ALL MR (Cri) 756.**
4. **Panchanan Mishra Vs. Digambar Mishra & Ors. 2005 ALL MR (Cri) 1806 (S.C.)**
5. **Shri.Udaysinh Vilasrao Patil Vs. The State of Maharashtra 2014 ALL MR. (Cri)4245.**
6. **Smt.Fatima Dawood Merchant Vs. State of Maharashtra 2000 ALL MR. (Cri)1745.**
7. **Lt. Col.Prasad Shrikant Purohit Vs. State of Maharashtra 2017 ALL MR. (Cri)2374.**

10. Citing Udaysinh Vilasrao Patil's case (cited supra) Shri. Tavar has submitted that if the main conspirator had not wanted deceased to be killed, the incident would not have occurred. In the reported case applicant was influential politician from influential family and considering apprehension of tampering bail application was rejected. Taking further his submissions Shri.Tavar has cited observations in Lt. Col.Prasad Shrikant Purohit's case (cited supra). It is observed that an unlawful agreement is gravamen of conspiracy. Such agreement may not be formal or express but inferable from declaration, acts and conduct of conspirators. It is a partnership in crime and hence, everything said or done by any of conspirators in execution or furtherance of common purpose is deemed to have been said, done or written by each of them.

11. To submit that in case of grave and serious offence, accused as lady or aged person is not criterion to grant bail. To buttress his submissions Shri.Tawar has relied on citation in the case of **(1)Smt.Fatima Dawood Merchant Vs. State of Maharashtra 2000 ALL MR. (Cri)1745** and **(2)Sau Janabai w/o.Narayan Rathod Vs. State of Maharashtra 2008 ALL MR. (Cri) 2722.** To submit on the theory of conspiracy and main conspirator being present applicant Bajirao, Shri.Tawar and Shri.Dusane have relied on certain pieces of evidence.

12. After the assault, while leaving the spot the assailants uttered that let Bajirao Nana be informed that the work was done as per his order. From the statement of Amol Choudhari and others, it is seen that just before the incident, accused Jayraj who is one of the

main assailant uttered that they would finish the game on that day (08-06-2018) and he was making constant phone calls before the incident. Statement of Amit Pawar, nephew of Bajirao shows that since Balapur village Panchayat election animosity between accused Bajirao and deceased Raosaheb started. Then there is one incident of Dandi Pournima (Maghi Pournima). It is the ritual that accused Bajirao and his followers erect wooden pole to start Holi festival which is actually celebrated after one month on Falgun Pournima. At the time of ceremony of Dandi Pournima accused Bajirao and others threatened deceased Raosaheb and Vaibhav to see them off as they were poking nose in family feud. One or two days prior to the incident witnesses Jayesh Patil and Shashikant Patil heard accused Harshal while threatening deceased Raosaheb and Vaibhav in their house that accused Bajirao had asked other accused persons to kill them and they should be aware of that.

13. Witness Vijay Shukla is the friend of accused Bajirao and deceased Raosaheb since many years. He used to go to Swastik Talkies daily which is owned by accused Bajirao. On 07-06-2018 he heard accused Jayraj and others talking about beating and killing Raosaheb as per instructions of accused Bajirao. He also heard that accused Bajirao assured accused Jayraj that he would anyhow save and rescue him.

14. Shri.Tavar and Shri.Dusane have relied on two things as far as CDR of accused Bajirao is concerned. For more than two hours just prior to the incident, there is no phone call or SMS to and fro the cell phone of accused Bajirao. However, since 6-28 pm onwards

there is flurry of incoming and outgoing phone calls by the accused. Shri.Dusane has highlighted that four of the phone calls were made to Additional Superintendent of Police, Dhule, two were made to sitting MLA of Chopda, District:- Jalgaon, one call was made to sitting MLA of Dhule city and two calls were made to Police Inspector of Dhule city police station. It is not clear why number of such calls were made and some repeatedly to such influential persons just after the incident. Shri.Mehta has tried to canvass before the Court that accused Bajirao was present in police station from 7-00 pm and last five calls on 08-06-2018 were made from the police station. The tower location is Trimurti Plaza, Devpur. According to Shri.Mehta, it is the address of Devpur police station. However, Shri.Tavar has submitted information in writing showing the address of Devpur police station which is CTS No.4559/1B 'Panth Nivas'. It is further submitted by Shri.Mehta that as a law abiding citizen, accused informed Additional Superintendent of Police immediately when he came to know that some untoward incident occurred. It is not clear what was the necessity to do so if the accused has no concern with it. Shri.Tavar has submitted that proposal for application of provisions of M.C.O.C. Act is in process. This also signifies gravity of the offence. The accused has not furnished copy of earlier order of rejection of bail for the reason best known to him.

15. From the record of phone calls as well as the fact that accused runs Pavanputra Vyayamshala and considering the submissions of both sides, it is crystal clear that accused is influential person and he has connections with other persons in power. Statement of witness Vijay Shukla and some others show that

accused pressurized witnesses on previous occasions and got himself freed from the clutches of law. There are written complaints about the threatening to informant and other family members of deceased at the behest of accused. So chances of tampering cannot be ruled out. Furthermore, three of the accused including son of present accused are recently arrested and further investigation is going on. Some new facts may be revealed and grant of bail is likely to adversely affect the investigation. Filing of chargesheet is not change of circumstances. For this purpose Shri.Tawar has relied on citation in the case of Virupakshappa Gouda And Anr. Versus The State of Karnataka And Anr. 2017 (2) Crimes 56 (SC). Considering all aforesaid circumstances, there are number of things pointing towards hatching of conspiracy at the behest of present accused. Apparently, other accused persons have no reason to commit such killer assault. In view of all aforesaid discussion, I am of the opinion that this is not fit case to grant bail to the accused/applicant. In the result, I pass following order.

**ORDER**

The application is rejected.

Sd/-

[ A.D.Kshirsagar]

Addl. Sessions Judge, Dhule.

Date:-23-10-2018

**Certificate**

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**Name of the Steno** : Nandkishor E.Kolhe  
**Name of the Court** : Court of District Judge-3  
& Addl. Sessions Judge, Dhule.  
**PDF Uploading Date** : 24-10-2018

Sd/-...  
Stenographer