

SESSIONS CASE NO.103/2018

Vaibhav @ Sonu Arun Pawar

-versus-

The State of Maharashtra

Order Below Exh.17

Accused Vaibhav 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 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 led 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 Patil 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(present applicant), 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 Vaibhav Pawar was arrested on 10-07-2018.

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

06. Ld.Adv.Shri.N.P.Mehta for the accused has submitted that accused was not present on the spot. His surname is Pawar but he is not in blood relation to accused Bajirao Pawar. He is falsely implicated since he is the friend of accused Gaurav Pawar. No overt act is attributed to him. None of the witnesses has stated about specific act of this accused. Investigation Officer has submitted CDR of cell phones of all the accused and some more persons except present applicant. It is so because he was present in one hotel at Amalner. So his CDR and CCTV footage of said hotel is suppressed.

Even his name is not mentioned by any other witness regarding involvement of so called conspiracy. There is no evidence to show that accused was involved in conspiracy. No purpose will be served by keeping the accused in jail. Trial will take long time. Statements of witnesses are not reliable and those are got up statements. There are no criminal antecedents. Only one case was filed against him. 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 there is ample evidence showing that present accused took active part in the incident of assault on both victims. He has categorically stated that collection of CCTV footage from the hotel at Amalner is incorrect statement. He has submitted that defence of alibi has to be proved by evidence at the time of trial. Name of the accused appears in FIR with his active part. Eye witnesses have stated about his role. There are criminal antecedents. Investigation is still going on in respect of three absconding accused who are arrested subsequently.

08. Ld. Advocate Shri.N.G.Dusane has submitted written submissions. He has submitted that the informant and his relatives are constantly threatened. He has submitted printout taken from social media. He has supported submissions of Shri.Tavar on material aspects. According to him, this is second bail application and all his contentions including plea of alibi were already considered in first bail application. Further investigation is going on and it is likely to be adversely affected.

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 area.

10. As far as alibi defence is considered Shri.Tavar has relied on the decision of Hon'ble Bombay High Court in **Udayanraje Pratapsinhraje Bhosale Vs. The State of Maharashtra 2000 ALL MR (Cri) 1741**. In the reported judgment Hon'ble High Court observed that question of defence of alibi is not gone into by the Court at the stage of bail as it would have to be proved by the applicant in terms of Section 106 of the Indian Evidence Act at the time of the trial. So that defence cannot be taken into consideration at this juncture.

11. Though first informant Prashant Patil partially witnessed the incident, in FIR it is mentioned that accused Vaibhav Pawar was present with deadly weapon sword at the time of assault. Two eye witnesses Akash @ Hitesh @Shendya Rajendra Patil and Harish Shinde mentioned about the presence and role of accused Vaibhav Pawar in their police statements. Their statements show that accused Vaibhav Pawar and other assailants carried deadly weapons like sword, knife, iron rod, kukri etc. with them. Present accused Vaibhav alongwith accused Bhupesh and Harshal @ Dadu cordoned deceased Vaibhav Patil which helped Rushikesh to deal knife blows. Thus, there is prima facie direct evidence as to involvement of the accused in the offence.

12. Before filing of chargesheet present accused filed Bail Application No. 567/2018. It was rejected on merits by the concerned Court. The Court considered the evidence against the accused as well as his claim of alibi. Apart from filing of chargesheet, there is no material change in circumstances.

13. Recently three of the accused were arrested and further investigation is going on. Some new facts may be discovered. There are written complaints regarding threats given to the informant and other family members. Even today Shri.Dusane has submitted printouts taken from social media in which veiled threats are given to the informant while posting birthday wishes to accused Vaibhav Pawar. Considering all these aspects, this is not fit case to grant bail to the accused. In the result, I pass following order.

ORDER

Application is rejected.

Sd/-

[A.D.Kshirsagar]

Addl. Sessions Judge, Dhule.

Date:-20-11-2018

Certificate

I certify that the contents of this PDF file
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Name of the Steno : Nandkishor E.Kolhe
Name of the Court : Court of District Judge-3
& Addl. Sessions Judge, Dhule.
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Sd/-...
Stenographer