

SESSIONS CASE NO.103/2018

1.Arjun @ Appa Bhagwan Ahire and
2.Bhushan Nimba Pagare

-versus-

The State of Maharashtra

Order Below Exh.47

Accused Arjun @ Appa Bhagwan Ahire and Bhushan Nimba Pagare have 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, 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. Subsequently, four accused were arrested and after completion of investigation supplementary chargesheet has been submitted. Present two applicants are the accused against whom supplementary chargesheet has been submitted.

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.Akil Ismail for the accused has submitted that there are no names of present applicants in FIR and no overt acts of

some unknown accused are mentioned. Even no overt act of present applicant is mentioned in the statements of eye witnesses, Hitesh, Harish, Aakash and Omprakash. First informant identified the accused persons in T.I.Parade which is surprising considering that his supplementary statement shows that he did not witness the actual assault. No witness has stated role of these applicants while identifying them. There is no material to show as to how police reached to present applicant. There is no recovery from both applicants though both were remanded in police custody. After submission of supplementary chargesheet need of further custody is over. Accused Arjun is Automobile Diploma Engineer and is in search of service. Accused Bhushan is security guard. Both applicants are ready to give undertaking that they will not enter the city except for attending trial. Accused are ready to abide by all 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. According to him, T.I.parade is not necessary and conviction is possible in its absence. For charge of criminal conspiracy even present on the spot is not necessary. So question of doing overt act does not arise at all. No overt act is not ground for bail. Eye witnesses have identified the applicants in T.I.parade. In memorandum statements of co-accused Rhushikesh, Bhupesh and Harshal names of present applicants are disclosed. Allegation of tampering is already in place and certain material of threatening including police complaints by the informant are already submitted on record while dealing earlier bail application. He has also submitted that bail applications of all accused persons are

rejected by this Court as well as Hon'ble High Court.

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 relied on printout taken from social media. He has supported submissions of Shri.Tavar on material aspects. Memorandum statement of co-accused Bhagwan shows presence of these applicants and their participation in the offence

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. Shri.Tavar has rightly submitted that for offence of criminal conspiracy or for offence of rioting and committed in prosecution of common object of unlawful assembly, commission of overt act is not necessary. For offence of conspiracy presence on spot is not necessary. In the course of investigation police came to know about participation of four accused against whom supplementary chargesheet has been submitted. While recording statements of co-accused under Section 27, names of present applicants are disclosed. Statements of co-accused Rhushikesh, Bhupesh, Harshal and Bhagwan disclosed presence of applicants and their participation in the offence. So there is no substance in the submission of Shri.Ismail that the police arrested the applicants without any nexus or material.

11. Shri.Ismail has created question mark about identification of accused by informant Prashant. His submission is that informant did not witness the assault and reached on the spot subsequently, so he had no occasion to see the assailants. However, one has to consider that there are four witnesses who identified both applicants in T.I.Parade. Witnesses Omprakash Patil, Yogesh Patil, Aakash @ Hitesh @ Shendya Patil and Harish Shinde identified both applicants as the assailants.

12. Shri.Ismail has submitted that names of applicants are not found in FIR or statements of other witnesses. It is quite obvious because both applicants are residents of Nijampur Taluka Sakri and witnesses had no reason to know them prior to the incident. The witnesses identified them in T.I.Parade by touching them because they saw them at the time of incident. Thus, there is prima facie direct evidence as to involvement of the accused in the offence.

13. First informant has submitted material showing direct or indirect threats to him as well as his family members. He filed applications to the police about such threats and sought police protection from time to time. Thus, there is material of involvement of the applicants in the offence. There are chances of tampering. 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:-17-06-2019

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