

SESSIONS CASE NO.103/2018

Vaibhav @ Sonu Arun Pawar
-versus-
The State of Maharashtra

Order Below Exh.49

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.S.G.Sharma for the accused has submitted that accused was not present on the spot. It is alleged in FIR that the accused had sword with him still, no overt act is attributed to him. None of the witnesses has stated about specific act of this accused. At the time of incident accused was present at Hotel Poonam, Amalner, District Jalgaon. He wanted to rely on the defence of alibi. He has submitted certain evidence to support the submission of alibi. No purpose will be served by keeping the accused in jail. Trial will take

long time. 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 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. After rejection of earlier bail application there is no change in circumstances.

08. Ld. Advocate Shri.N.G.Dusane 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. According to him, this is second bail application after filing of chargesheet and all his contentions including plea of alibi were already considered in first bail application.

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.Sharma has tried to canvass the plea of alibi claiming the evidence of CCTV footage. For that purpose he has tried to rely on the bail order passed by Hon'ble Bombay High Court in one

Sessions Case pending in this court bearing S.C.No.79/2016 State Vs. Nandu Govind Khile etc.14. In that case, Shri.Sharma has submitted that Hon'ble High Court granted bail on the basis of CCTV footage. Firstly, it is not the reported citation. Furthermore, Ld. PP Shri.Tavar who is acting as Special PP in the aforesaid case which is pending in this Court, has submitted that in that matter CCTV footage was collected by the Investigation Officer in the course of investigation. In present matter the defence wants to produce some CCTV footage and no such footage was collected in the course of investigation. For these reasons accused cannot take benefit of the bail order in another Sessions Case.

11. To support claim of alibi, Shri.Sharma has submitted CCTV footage of hotel Poonam as well as two affidavits. Pavan Pawar is the real brother of the accused who wants to state that CCTV footage was also handed over to the Investigation officer and the footage produced in the court is not tampered. Being real brother, the deponent has interest in supporting the accused. Another affidavit is of one Raja Pardhi who was working as the manager of Hotel Poonam. He is the employee of the accused, so there is no surprise that he wants to help the employer. 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.

12. 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. All the contents are considered in earlier bail applications decided on 20-11-2018. There is no change in circumstances except filing of supplementary chargesheet against subsequent accused persons. So, there is no change in circumstances as far as present applicant is concerned. 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/-...
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