

SESSIONS CASE NO.103/2018

Gaurav Bajirao @ Subhash Pawar
-versus-
The State of Maharashtra

Order Below Exh.62

Accused Gaurav 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, 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 Gaurav Pawar was arrested on 13-10-2018.

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.S.Chavan for the accused has submitted that accused was not present on the spot. He is falsely implicated. No overt act is attributed to him. In FIR no specific role is attributed, but in supplementary statement it is shown that accused committed attack by sword. The prosecution relied on five eye witnesses who state about presence of accused, but none of them states about overt act. Though the eye witnesses lifted two injured, their clothes are not stained with blood. Furthermore, it does not appear probable that

both victims alighted from the vehicle though they saw that accused had deadly weapons with them. CDR records shows location of the accused at Agra road, Dhule and not on the spot. There are some photographs and affidavit of shopkeeper about the location of accused at relevant time. There is no evidence of communication between present applicant with his co-accused. No purpose will be served by keeping the accused in jail. Trial will take long time. There are no criminal antecedents. 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 it is settled legal position that FIR is not encyclopedia. There are five eye witnesses stating about presence of accused on the spot and his participation in the assault. The CDR record shows that accused talked with co-accused on the day of incident as well as immediately before and after said day. Applicant is prime accused and he is son of main prime accused Bajirao Pawar. Blood stained clothes of eye witnesses are seized in the investigation. Present applicant threw his blood stained clothes in river at Trambakshwar, District Nashik. Memorandum statements of co-accused recorded under Section 27 Indian Evidence Act disclosed presence of accused on the spot and his participation. He has submitted that defence of alibi has to be proved by evidence at the time of trial. There are constant threats given to informant and his relatives. Recently, present applicant is convicted in one case under Section 324 IPC which amounts to previous antecedent.

08. Ld. Advocate Shri.N.G.Dusane has submitted that the informant and his relatives are constantly threatened. He has relied

on printouts taken from social media and submitted earlier. He has supported submissions of Shri.Tavar on material aspects. According to him, defence of alibi has to be established at the time of trial. There are five eye witnesses who stated about presence of accused on the spot. The witnesses knew the accused prior to the incident. The accused absconded for about 3 to 4 months. There is possibility of absconding, if bail is granted.

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 and Shri.Dusane have 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. Witnesses Prashant Daga(informant), Omprakash Daga, Yogesh Raosaheb, Aakash @ Shendya and driver Hitesh are the eye witnesses who saw the accused at the time of incident and saw that he actively participated in the assault. There is no substance in the

submission of the accused that clothes of eye witnesses had no blood stains since such clothes are seized in the investigation. CDR record shows communication between present applicant and other co-accused. Eye witnesses knew the applicant prior to incident. In fact, both sides were acquainted with each other since long. There is direct evidence of eye witnesses against the applicant about his presence and active participation with the help of sword in the assault. Considering these aspects, there is prima facie material showing involvement of the accused in the offence.

12. Present applicant was arrested on 13-10-2018. He was absconding for about 04 months. He and two more accused were arrested subsequently. Investigation was carried against them and supplementary chargesheet has been filed. It is the prosecution case that conspiracy to commit murder was hatched at the instance of main accused Bajirao Pawar. Present applicant is the son of said accused and he was at the forefront in committing assault in consequence of the conspiracy. 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 and present applicant Gaurav Pawar. Informant filed complaint about threats on 30-10-2018. 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:-06-08-2019.

Certificate

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Name of the Court : Court of District Judge-3
& Addl. Sessions Judge, Dhule.
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Sd/-...
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