

Order below Exh. 6 in Sessions Case No. 68/2018.

1) This is an application for bail under section 439 of the Cr.P.C.

2) The case of the prosecution in brief is that on 8/4/2018 at 11.30 p.m. Pradeep Wakade, who is the distant maternal uncle of the informant came to the house of the maternal uncle of the informant by the name of Amrut Wakade. At that time dog of Pradeep Wakade was with him. Pradeep Wakade said to the informant and others that when he was taking his dog from in front of the house of Vikas Wakade (accused No.1), the dog of Pradeep Wakade started barking at the dog of accused No.1 Vikas Wakade. This infuriated the accused No. 1 Vikas Wakade so much that accused No. 1 started abusing Pradeep Wakade and slapped Pradeep Wakade on the cheek. Thereafter, maternal uncle of the informant Amrut Wakade along with Sidhartha Wakade and Pradeep Wakade left for the house of Vikas Wakade. On the way to Thakur Kutir, accused Vikas Wakade, Vishal Wakade and Abhijit Wakade were hiding themselves, all of a sudden, they came in the light of the pole and they were armed with iron rods. Accused No. 1 Vikas Wakade delivered a blow of iron rod on the head of Amrut Wakade. Accused No. 2 Vishal Wakade delivered a blow of iron rod on the cheek and head of Pradeep Wakade. Accused No. 3 Abhijit Wakade delivered a blow of iron rod on the head of Siddhartha Wakade. On witnessing the incident, the informant started shouting. On hearing his shouts Nitin Patil, Rajesh Mohite and Darshan Wakade came there running. Soon thereafter, the present applicants i.e. Manohar Wakade, Sudhakar Wakade and Vasant Wakade came there along with hockey sticks and they beat the informant, Nitin Patil, Rajesh Mohite and Darshan Wakade by means of hockey sticks.

Amrut Wakade died during the incident.

3) On these allegations FIR was lodged on 9/4/2018. After completion of investigation, charge sheet was submitted in the trial Court and it has been committed to this Court for trial.

4) Heard Shri. Bangera, learned counsel for the petitioners and Shri. Pawar, learned Public Prosecutor for the State.

5) Shri. Bangera, submitted that the petitioners have been falsely implicated in this case. According to him, when assault was allegedly launched on Amrut Wakade, Siddhartha Wakade and Pradeep Wakade, the petitioners were not there at the scene of the offence. They came there later. According to the FIR, the petitioners assaulted the informant, Nitin Patil, Rajesh Mohite and Darshan Wakade, but none of them has suffered any injury nor any injury certificate has been collected by the prosecution. He submitted that though petitioners have been attributed with the role of assault by hockey sticks, only iron rod and stick are recovered from the petitioner Sudhakar Wakade. He submitted that since the petitioners did not play any role in the assault on the deceased, the petitioners be released on bail.

6) Shri. Pawar, learned Public Prosecutor submitted that the petitioners were the members of an unlawful assembly. The petitioners did not come later at the spot of the incident. They came when the incident was in progress. He submitted that there is tension in the village and if the petitioners are released on bail, tension will escalate and the possibility of committing some other offence cannot be ruled out. He further submitted that even after the registration of the FIR, pending investigation, offences have been committed by the family members of the petitioners. Therefore, petitioners may not be released on bail. He submitted that the informant has filed affidavit stating

therein that there is a threat to his life from the petitioners.

7) On perusal of the FIR and the investigation papers, it is seen that the incident is in two parts. The first part relates to the assault on the deceased Amrut Wakade, Siddhartha Wakade and Pradeep Wakade by the accused Vikas Wakade, Vishal Wakade and Abhijit Wakade. Other part of the incident pertains to the role played by the petitioners. The petitioners are alleged to have assaulted the informant, witnesses Nitin Patil, Rajesh Mohite and Darshan Wakade. Admittedly, the prosecution has not collected the injury certificates of any of these witnesses. Even weapons i.e. hockey sticks are not recovered from the petitioners Manohar Wakade and Vasant Wakade. The weapons recovered from the accused Sudhakar Wadade are stick and iron rod. But it is not the case of the prosecution that the petitioner Sudhakar Wakade had assaulted the deceased Amrut Wakade. Having regard to the role played by these three accused, I am inclined to release the petitioners on bail.

8) However, to allay the fear expressed by the learned Public Prosecutor some conditions need to be imposed on the petitioners. In this view of the matter, following order is passed.

ORDER

1. Petition is allowed.
2. Each of the petitioners be released on P.R. bond of Rs. 1,50,000/- , with one solvent surety in the like amount each and on condition that they shall not enter village Saswane, Tal. Alibag, Dist. Raigad, for a period of one year.

Alibag,
Date : 16/08/2018

(M.G.Sewlikar)
Sessions Judge, Raigad-Alibag.