

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 1927 OF 2014

Mahesh Pareshram Nalawade	...	Applicant
vs.		(Accused No.6)
The State of Maharashtra	...	Respondents

WITH
CRIMINAL APPLICATION NO. 38 OF 2015
in
BAIL APPLICATION NO. 1927 OF 2014

Trupti Avadhut Malvi	...	Applicant-Intervener
In the matter between:		
Mahaesh Pareshram Nalawade	...	Applicant
vs.		
The State of Maharashtra	..	Respondent
Mr. Anjali Patil, Advocate for the applicant		
Mrs.R.V.Newton, APP, for the respondent-State.		
Mr. Aniket U. Nikam, for the Intervener.		

CORAM: SMT.SADHANA S.JADHAV,J.
ORDER RESERVED ON:10th February 2015.
PRONOUNCED ON: 5th March, 2015.

P.C.

The applicant herein is arrested on 7.6.2010 in Crime No.85 of 2010 registered at Rajarampuri Police Station, Kolhapur, for the offences punishable under Sections 302, 307, 147, 148 149, 341, 323, 120B, 427 of Indian Penal Code and under Sections 3(i) (ii), 3(2), 3(4) of M.C.O.C. Act. The investigation is completed and charge sheet is filed.

2. It is the case of the prosecution that on 5.6.2010, Atul Patil was admitted in CPR Hospital at Kolhapur with history of assault. His statement was recorded by PSI Rajarampuri Police Station as it was a medico-legal case. He disclosed that on 4.6.2010, at about 11.15 p.m., he along with Avadhut Malavi, Mukund Palange and Jawed Sayyed had left the hotel Athithi and were proceeding in a Maruti Car bearing Registration No. MH-14-AH-607. The car was being driven by Mukund Palange. Avadhut Malvi was sitting next to him, whereas Jawed Sayyed was occupying the rear seat. The Maruti car was followed by one Sumo Jeep. The said Jeep overtook the car. The Sumo Jeep had halted. Yogesh Nalawade, Swapnil Jadhav, Nitin Wetel, Ajit Tiwade, Govind Nayadu and two unknown persons had alighted from the said jeep. They were armed with deadly weapons. They mounted assault upon Avadhut. The said two unknown persons had assaulted Avadhut Malavi and Mukund Palange with iron pipes. Avadhut Malavi had succumbed to the injuries at the said spot. On the basis of his statement, Crime No.85 of 2010 was registered against the named accused and two unknown persons. On 8.6.2010, the supplementary statement of the injured was recorded. In the supplementary statement, the informant has stated that he had a quarrel with the present applicant in the past. The informant had assaulted the applicant with a stick. An offence was registered against the informant.

Avadhut Malavi had accompanied the first informant, whereas Nitin had accompanied the present applicant. At that time, the informant was threatened with dire consequences. The informant had learnt that the present applicant has also been arrested in the present crime.

3. The learned counsel for the applicant submits that the name of the present applicant is not stated in the FIR. According to him, no role is attributed to the present applicant. That he is not instrumental in causing the fatal injury to Avadhut Malavi. It is also urged that the co-accused Sanjay Waskar has been enlarged on bail by this Court (Coram: Abhay M. Thipsay, J.) vide order dated 10.11.2014. Hence, the learned counsel for the applicant prays for grant of bail.

4. On 7.6.2010, the present applicant and two co-accused had informed the police voluntarily that Tata Sumo bearing No. MH-12-BV-7154 was abandoned in Karnataka State. The said Sumo was attached under a panchnama dated 7.6.2010. In the present case, there are eye-witnesses to substantiate the allegations levelled against the applicant. The learned counsel for the applicant has placed reliance upon the order passed by the Co-ordinate Bench Hon'ble Justice A.M.Thipsay dated 10.11.2014 thereby enlarging the co-accused Sanjay Waskar on bail. The learned counsel for the applicant submits that by virtue of

doctrine of parity, the applicant would also be entitled to grant of bail. In the order dated 10.11.2014, Hon'ble Justice Thipsay has specifically observed in para 3 as follows :-

“3. Admittedly, the applicant is not the actual assailant. In other words, there is no dispute that the applicant has not taken any part in assaulting the said Avdhut Malave. It is nobody's case that the applicant was present on the spot at the time of the assault on Avdhut Malave. It is the case of the investigating agency that the other eight accused in this case are the actual assailants.”

In view of this, the observation and claim of the applicant, this Court has perused the papers of investigation and the submissions recorded in the course of investigation.

5. One Mukund Palange is an eye-witness to the incident. He was injured in the said incident. He was admitted in the hospital on 5.6.2010. he had sustained two grievous injuries on his head. The C.T. Scan shows evidence of acute extra dural hematoma. He was admitted in the hospital. His statement was recorded on 2.7.2010. he has specifically disclosed that on the date of incident, he was driving the Maruti car. Avdhut Malave was sitting next to him. The Sumo Jeep had overtaken them. That 7 persons had alighted from the said jeep. The applicant was one of them. He has specifically stated that in the past, there was a quarrel between Atul and the present applicant. At that time, Atul had assaulted the present applicant with a stick. That the present applicant had initiated

criminal prosecution against Atul. That the present applicant had good relations with Nitin Wetal. That in the quarrel between Nitin and Avdhut, the latter was threatened with dire consequences. The said witness has also stated that Javed was also travelling in the same car. However, he had rescued himself. It is specifically stated that the applicant had alighted from the said jeep and he was armed with a weapon. The witness Javed Sayyed has specifically stated that at the time of altercation, the present applicant had also assaulted upon Atul and Mukund with iron pipes. He has specifically further stated that the applicant is residing in the same area and therefore there is no question of mistaken identity.

6. The learned counsel for the applicant has drawn attention of this Court to the statement of Fayaz Nagarje. He has disclosed to the police that on 6.6.2010, Ajit Tiwade who is accused No.4 had called him on his cellphone and informed him that he along with others had caused homicidal death of Avdhut. Ajit had made an extra judicial confession before the said witness. There is evidence to show that the present applicant had participated in the said incident. As far as Sanjay Waskar is concerned, there was no allegation that he had alighted from the said Sumo Jeep. In view of the abovementioned facts, this Court is of the

opinion that the applicant herein is not entitled to grant of bail. The learned Sessions Judge has observed that the applicant happens to be a member of organized crime syndicate and that he is also facing charge under Section 3(4) of the M.C.O.C. Act. At this stage, there is nothing to hold that the applicant was not involved in homicidal death of Avdhut Malave. Hence, the application being sans merit, stands rejected.

7. The observations made hereinabove are prima facie in nature and the learned Sessions Court shall not be influenced by the said observations at the time of trial.

The Application is rejected.

8. The Intervention Application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)