

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2578 OF 2014

1. Shri Santosh Tukaram Pawar)
2. Shri Subhash Bhima Pawar).. Applicants

vs.

The State of Maharashtra ... Respondents

ALONG WITH
CRIMINAL BAIL APPLICATION NO. 2576 OF 2014

Mr. Sanjay Manik Dindore ... Applicant
vs.
The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO. 107 OF 2015

Sitaram Yallappa Dindore ... Applicant

In the matter between :
Santosh Tukaram Pawar & Anr. ... Applicants
vs.
The State of Maharashtra .. Respondent

Mr. Shirish Gupte, Senior Advocate i/b. Mr. U.R. Agandsurve for the applicant (in BA No.2578/14)
Mr. S.R.Borulkar a/w Mr. Prashant Pandey a/w Mr. K.L.Gaikwad for the applicant in BA No.2576 of 2014.
Mr. Jaydeep Mane, for Intervenor.
Mrs.R.V.Newton, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
RESERVED ON: 3rd February, 2015.
PRONOUNCED ON : 6th February, 2015.

P.C.

Heard. These are the applications under Section 439 of the Code of Criminal Procedure, 1973. Applicant No.1 is arrested on 1.5.2014 and applicant No.2 is arrested on 4.5.2014, whereas the applicant in Bail Application No.2576/2014 is arrested on 16.7.2014 in Crime No.68 of 2014 registered at Vairag Police Station for the offences punishable under Sections 302, 143, 147, 148, 149, 427, 341, 364, 120-B, 212 of Indian Penal Code and under Section 135 of the Bombay Police Act. The investigation is completed and charge-sheet is filed on 29.7.2014.

2. It is the case of the prosecution that on 26.4.2014, Sitaram Dindore lodged a report at the police station alleging therein that his nephew Vitthal @ Ichappa Maruti Pawar was residing along with his family at Vairag. That 4 – 5 years ago, there was a quarrel between Vitthal and Shivaji @ Anna Chandrakant Pawar. That Vitthal was having a brick kiln at Vairag. He used to go to Kiln everyday at about 7 to 7.30 a.m. He had to pass from front of the house of Shivaji Pawar.

3. It is alleged that on 26.4.2014 at about 7.15 a.m., he heard a commotion in front of the house of Shivaji which is situated at a distance of 300 ft. from his

house. He along with his son Narsinha rushed to the spot. They saw that Vitthal Pawar was being assaulted by about 20 persons. They had thrown chilli powder in his eyes and were assaulting him with sword, sathoor, sticks, iron rods and stones. Vitthal was being brutally assaulted and had sustained grievous injuries. His motorcycle was parked by the side of the road. The assailants had also damaged his motorcycle. Shivaji Pawar had also parked his Bolero Jeep nearby. Upon seeing the complainant and his son, the assailants had rushed towards Narsinha. The complainant had asked his son Narsinha to leave the spot. In the meanwhile, the mother of the complainant namely Kondabai had rushed to the spot. At that time, the assailants had picked up Vitthal in an injured condition and had taken him in the Bolero Jeep of Shivaji. The second son of the complainant namely Balaji informed about the incident and abduction to Sanjay Pawar.

The complainant requested Sanjay Pawar to follow the jeep and see as to where Vitthal was being taken. The complainant learnt from the people gathered at the police station that the assailants had abandoned Vitthal in an injured condition at the Bazar area. Vitthal was taken initially to the Government Hospital at Vairag and from there he was shifted to Solapur. The complainant learnt that the doctor at Solapur declared him dead. On the basis of the report, offence was registered against 20 persons. In the course of investigation, the I.O. has recorded the statements of eye-witnesses.

4. The learned Senior Counsel submits that the I.O. had recorded the statement of one Rajendra Pandhermise on 9.5.2014. He had disclosed to the police that on 26.4.2014, Shivaji Pawar along with 10 – 12 persons was assaulting Vitthal Pawar in front of the house of Shivaji Pawar. He had seen the motorcycle of Vitthal Pawar lying on the road. That the assailants had picked up Vitthal Pawar in an injured condition and had taken him in the Bolero Jeep of Shivaji Pawar. The witnesses Rajendra and Sanjay had followed the said vehicle on a motorcycle. They saw that six persons had taken the injured in the said Bolero Jeep. According to him, the applicant was not one of the six persons. That Bablu Pawar, Anna Pawar and Somnath Devkar thought that Vitthal is alive and therefore, they assaulted him with stones on his thigh and went away. Vitthal was thrown on the road in an unconscious condition. That the witness had taken him to Civil Hospital.

5. Learned Senior Counsel submits that the incident is divided into two parts. One being the assault in front of the house of Shivaji Pawar and then the second part consists of taking away the injured in the Bolero Jeep and abandoned him on the road. The learned Senior Counsel submits that the said eye-witness has not attributed any specific overt act to the applicants either in the first incident or in the second incident and, therefore, according to him, the applicants deserve

grant of bail. He has also drawn the attention of this Court to the statement of Rambhau Malne. Rambhau disclosed to the police that on 26.4.2014, he was in his cattle shed which is situated in front of the house. One jeep halted there. The people in the jeep were creating some commotion. Out of anxiety, he peeped in the jeep and saw that on the rear side, Vitthal Pawar was made to sit and Shivaji Pawar, Dhananjay, Bablu Pawar, Somnath Deokar and 7 – 8 people had forced him out of the jeep. Vitthal was seriously injured. Thereafter, the people assaulted Vitthal with stones on his thighs and other parts of the body and soon thereafter they left in the jeep towards the Village Hingni. That Sanjay Pawar and Rajendra Pandherpise had followed them on the motorcycle and had taken Vitthal in the jeep of Bharat Kharat. According to the learned Senior Counsel, the present applicants are not named by the eye-witness Rambhau. According to the learned Senior Counsel, Vitthal had died due to the injuries sustained by him at the hands of the persons named by Rambhau Malne and that the present applicants had no role to play.

6. The learned APP submits that Rambhau Malne has further stated that he had learnt from others that Vitthal was assaulted by the present applicants as well.

7. The learned Counsel Mr. Borulkar submits that that is hearsay evidence. He is appearing in Bail Application No.2576 of 2014. He has drawn the attention of this Court to the statement of Smt. Kondabai, who also happens to be an eye-witness. She has disclosed to the police that on 26.4.2014, her sons Sitaram and her grandson Narsinha had hurriedly rushed to towards the house of Shivaji Pawar. She heard commotion and, therefore, she followed them. She saw about 17 known persons and 3 unknown persons assaulting Vitthal Pawar. She tried to pacify them. She had also attempted to intervene and save Vitthal and at that time the said persons had abused her and pushed her aside. Sitaram and Narsinha had returned to their houses. Bapu Shinde, Babasaheb Dindore and Suresh Pawar had also attempted to intervened, but the assailants told them not to interfere or else they would face dire consequences. Hence, nobody interfered. Thereafter, she heard assailants saying that they should throw him near the Bazar. They brought the jeep of Anna Pawar and 5 – 6 persons had pushed the injured into the jeep and had fled. Some people followed the jeep on the motorcycle. She had seen the chilli powder fallen on the road. She has also assigned specific role to all the assailants and has given the description of the weapons held by them. The learned counsel submits that Smt. Kondabai is about 75 years old. It would not be physically possible for her to identify all the assailants and also give the description of the weapons held by them and hence, according to the learned

counsel, the statement of Kondabai should not be relied upon.

8. The learned APP submits that it is pertinent to note that the statement of Kondabai was recorded on the day of the incident and the whole incident was live and fresh before her. She did not have to memorize or recollect the incident. She is an eye-witness and there is no reason to disbelieve her statement.

9. Perused the post-mortem notes. The deceased had sustained about 41 injuries. It appears that the injured was literally battered to death. The cause of injuries is death due to multiple injuries (unnatural). The recitals of the post-mortem notes are sufficient to hold that the injured was rather assaulted by more than 17 persons and each one of them had assaulted the injured. This Court cannot be oblivious of the fact that the applicants have been charge-sheeted for the offence punishable under Section 302 read with Sections 143, 147, 148 and 149 of IPC. The common object of the accused is writ large. There is no reason to segregate the role attributed to each one or anyone of the accused. The eye-witnesses had no grudge against the present applicants. There is absolutely no reason to disbelieve the version of the eye-witnesses. This is a case of direct evidence. Hence, this Court is not inclined to grant bail to the present applicants.

10. Both the Applications being sans merit, stand rejected.
11. Intervention application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)