

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.859 OF 2015

Vilas Vasant Mohite .Applicant

v/s.

The State of Maharashtra .Respondent

Mr.Niranjan A. Mogre, Advocate, for the
Applicant

Mr.Arfan Sait, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.08.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks his enlargement on bail in connection with
C.R.No.206 of 2014 registered with the Dattawadi
Police Station, Pune, for the alleged offences
punishable under Sections 143, 147, 148, 149,
302, 307, 323 & 326 of the Indian Penal Code,
1870.

3. The incident in question has taken place on 12.05.2014 at about 10.30 p.m.. According to the complainant, Nanda Salunkhe, her son Dhanraj Salunkhe and his friend Sagar Waghmare (deceased) were sitting outside their house and chatting at around 11.30 p.m., when Santosh Salunkhe came there and asked Dhanraj to go home. It is alleged by the complainant, who is also an eye witness that she was washing utensils, at that time in front of her house. It is further alleged that when she went to Dhanraj to call him home, the applicant allegedly came there and started abusing Dhanraj over a petty fight, which had taken place six months prior. According to the complainant, she pacified the applicant, pursuant to which he left. Then the applicant's brother Raju Mohite along with his friends Santosh Salunkhe, Nitin Mankar, Ganesh Palekar & Dnyanu Gaikwad came armed with swords, sickle, sticks and stones and attacked Dhanraj.

Raju Mohite is alleged to have assaulted Dhanraj with a sword. It is alleged by the complainant that when she and her daughter intervened and tried to stop the fight, Santosh Salunkhe assaulted Swati with a sickle. It is alleged that the accused also assaulted Sagar Waghmare, resulting in grievous injury and ultimately leading to his death. The complainant has set out the overt acts of each of the accused.

4. Learned counsel for the applicant submitted that there are about 8 to 10 eye witnesses in the present case. He submitted that a perusal of the statements of the first informant - complainant and Dhanraj Salunkhe who were both present at the spot at the relevant time shows that both the persons although have attributed specific overt act to all the accused who were present there, have not stated that the present applicant was present at the spot armed

with any weapon or that he had assaulted the deceased. He submitted that the presence of the present applicant at the spot is doubtful, if the statements of the said witnesses i.e. of complainant and Dhanraj are perused minutely. He submitted that in fact, prior to the said incident of 11.30 p.m., another incident had taken place at 11.00 p.m. in which the applicant was assaulted by Dhanraj and Mahesh. He submitted that pursuant to the said assault on the applicant, the applicant had lodged an FIR being C.R.No.205 of 2014, which was registered with the Dattawadi Police Station, Pune, for the alleged offence punishable under Section 307 r/w. 34 of the Indian Penal Code, 1870. According to the said FIR, lodged by the applicant, he was assaulted by a sharp edged weapon by Mahesh.

5. Learned APP vehemently opposed the bail application. He submitted that the applicant was present at the spot at the relevant time. He relied on the statement of one Vishal Jaysing Lokhande in support of his contention. He submitted that according to the said eye witness - Vishal, the applicant was present at the spot and had pelted stones on the deceased and had also abused him. He submitted that although no overt act was attributed by Dhanraj and the complainant in their first statement, subsequently, in their supplementary statements, they have attributed an overt act to the applicant.

6. Perused the charge sheet, including the papers of investigation of C.R.No.205 of 2014. It appears that an incident had taken place at 11.00 p.m., in which the applicant was assaulted, by Dhanraj and Mahesh. Pursuant to

the said assault, the applicant lodged an FIR, as against Dhanraj and Mahesh. The Injury Certificate shows that the applicant had received injuries in the said assault. The initial statements of both the prime witnesses, Dhanraj and the complainant do not show that the applicant had assaulted the deceased with any weapon. Learned APP's submission that the bail applications of co-accused Raju Mohite and Santosh Patere have been rejected by this Court and that the observations made therein, would also apply to the applicant is completely devoid of merit. The bail applications preferred by co-accused Raju Mohite and Santosh Patere were rejected on merits, as specific overt acts had been attributed to both of them and as such their bail applications were rightly rejected. As far as the present applicant is concerned, a perusal of the initial statements of the prime witnesses i.e. the complainant and Dhanraj do

not show, that the applicant had assaulted the deceased or any other injured. Learned APP has not brought any material on record to show that the applicant has antecedents.

7. Considering the material on record, the applicant deserves to be released on bail on the following terms and conditions:

ORDER

(i) The applicant be released on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall attend Dattawadi Police Station, Pune on the 1st Saturday of every month between 11.00 a.m. to 12.00 noon till disposal of the trial;

(iii) The applicant to co-operate with the conduct of the trial;

(iv) The applicant shall not tamper or

attempt to contact the complainant or any witness concerned with the said case;

(v) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The aforesaid observations are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)