

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1077 OF 2015

1) Shri Manoj Pol & Ors. ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.Shekhar Ingawale i/b A.M. Misal for the Applicants

Mr.S.S. Pednekar, APP, for Respondent – State

Mr.M.S. Patil, Investigating Officer / Dy. S.P., CID Unit, Kolhapur – present

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: AUGUST 10, 2015

P.C.:

1. The applicants/accused have filed this application for pre-arrest bail, as they are apprehending arrest under sections 307, 333, 143, 147, 148 and 149 of the Indian Penal Code registered at C.R. No.00 of 2009 by Wanawadi police station, Pune, which was converted to C.R. No.92 of 2009 by Dahiwadi police station, District Satara.

2. The incident of assault has taken place on 25.10.2009 at bungalow of the applicant/accused No.1 Manoj Sadashiv Pol. It is the case of the prosecution that the father of the applicant/accused was a local leader of a political party and was an ex-Member of Legislative Assembly (MLA) for about 6 years, prior to October 2009. The complainant Kundalik Narayan

Tembre was a police constable who was given the duty of security at the bungalow of the said MLA. When he attended the duty at around 9.30pm and thereafter at 1 pm to 1.30 pm in the afternoon, the applicant/accused No.1 and other two accused Abhay Mohan Pol, Pintu @ Pravin Mohal Pol alongwith other accused persons including the accused Nos.3, 4, 5 and 7 picked up quarrel with him. They made accusation that Sadashiv Pol lost the Assembly Election because the community of the constable Kundalik Tembre did not support his father and then they started assaulting him with fist blows, kicks, sticks and stones and abused him. So he in his private defence, fired two rounds in the air. At that time, the applicants/accused snatched that gun and assaulted him with rifle brutally. He became unconscious due to assault and subsequently on that day, in the evening, he was shifted to civil hospital, Satara. He was injured and thereafter, he was shifted to Command hospital, Vanavadi, Pune. His complaint was recorded two days thereafter i.e., on 27.10.2009. The accused were not arrested from 2009 till June 2015 when the application for anticipatory bail was moved.

3. Mr.Ingawale, the learned Counsel for the applicants/accused has submitted that the applicants are innocent. This constable was violent and he was behaving like a mad person. He pointed gun at the ex-MLA Sadashiv Pol and there was a terror in the bungalow. The female

members of the family were scared and started running. The complainant was very violent and therefore he was overpowered by the applicants/accused. The complaint against the applicants/accused is false. He pointed out that there is a cross case against Tembre. The complaint given by Sadashiv Pol on 25.10.2009 is first in time as it is registered at C.R. No.92 of 2009 at Dahiwadi police station under sections 307, 342, 120B of the Indian Penal Code. The said FIR was registered at 1830 hours on the same day. He submitted that due to political rivalry Mr.Sadashiv Pol lost assembly election, the son and the nephews of Mr.Sadashiv Pol are falsely implicated in the present offence. In fact, they tried to defend the family members from violent Tembre, who started firing randomly and there was threat to the life of Sadashiv Pol and other members of the family. It is further submitted that the statement of Tembre was recorded 8 times and this itself shows that the prosecution wanted to improve his story and implicate the applicants/accused falsely in the case. He further submitted that the applicants/accused were not arrested and taking the applicants/accused into custody for interrogation is not required. Taking the applicants/accused into custody after six years will be unjust. He further relied on the statement of police officer Imran Mulani, dated 26.10.2009. He submitted, as per his statement, that on 25.10.2009, at around 1.15pm, the complainant Tembre had fired in the air and he threatened him that he should run away. He also heard another

firing. At that time, Mulani had locked himself in the room out of fear. The learned Counsel submitted that Mulani was a constable posted as a security guard to Mr.Sadashiv Pol. He further submitted that many female members in the family had stated the something that Tembre had fired at random and it was threat of life to Sadashiv Pol. He submitted that if the complainant Tembre was injured, he was not assaulted by the applicants/accused but assaulted by the mob which subsequently entered the house. He further submitted that the statement Shashikant Galande also supports the statement of Mulani. It is further submitted that out of these applicants/accused, the name of Krushna Pol, who is accused No.5, is nowhere mentioned. His name is not taken by either of the witnesses that he was aggressive and assaulted Tembre. He submitted that no custodial interrogation is required of the applicants/accused after so many years.

4. Learned Prosecutor has opposed the application. He relied on the statements of the complainant and many witnesses. He also relied on the statement recorded under section 164 of Kundalik Tembre. He submitted that the complainant constable Tembre was on duty and the statements of the witnesses disclose that he was attacked by the applicants/accused because he belonged to a particular caste and because of that, Sadashiv Pol lost the election. However, his party was in power. Applicant/accused

No.1 is the son of the the ex-MLA Sadashiv Pol. The learned Prosecutor gave chronological details in respect of how the incident of assault has taken place. He further submitted that the SHO, Dahiwadi, informed API Mane about the incident and told him to rush to the spot at 1332 hours on 25.10.2009. However, there was a mob gathered at Mardi village and they stopped the jeep and forced the police staff to get down and then, the jeep was turtled and was set on fire by the mob. Thereafter, at around 1420 hours, the head constable Galande and others reached and found that Tembre was lying bleeding in an unconscious state. His hands and legs were tied under tree. They wanted to shift him to the hospital but the mob and the applicants/accused did not allow them to shift him to the hospital. He submitted that a false complaint was registered after the assault by Sadashiv Pol with the Dahiwadi police station at C.R. No.92 of 2009 and Tembre is falsely implicated. The learned Prosecutor submitted that the incident of assault on Tembre is true and the applicants/accused are very much involved in the assault. He relied on the statement recorded under section 164 of Tembre. He also relied on the statement of Galande and other witnesses which were recorded on the same day. He submitted that the delay of two days can be explained considering the injuries sustained by Tembre. He relied on the injury certificate of Tembre. He further pointed out and relied on the statement which was in fact earlier recorded as dying declaration of Tembre. He submitted that the

applicants/accused, considering the nature of the offence, are very much required since 2009 and their custody is necessary. He further submitted that there are two cases registered against the applicant/accused No.1 Manoj Pol under sections 324 and 452 of the Indian Penal Code. Further, six cases against applicant/accused No.6 and also 3 cases against applicant/accused No.2 Abhay Pol, of same nature, are registered. He further submitted that they are all acquitted from these cases. Sadashiv Pol being an ex-MLA, has full control over the villagers and in the said area, the applicant/accused No.1 and others also have created terror in the vicinity and if the applicants/accused are granted pre-arrest bail in this case, then, it will send wrong signal to public at large.

5. I have perused the order, the complaint, cross-complaint, statement of the witnesses, supplementary statements of the witnesses. Seen the injury certificate, photographs of the injured and all the documents which are produced here by the learned Counsel for both the sides. On a bare perusal of the two cross cases, I am of the prima facie view that the complaint given by Tembre is a true case. This is supported by the injury certificate of the complainant Tembre. He was assaulted brutally and has suffered grievous injuries to the head, multiple skull fracture and bilateral conductive hearing loss, ear bleeding, muscle bleeding and blackening of eyes. The injured was taken first to KNP General hospital, Satara at 7.40 pm. In the injury certificate dated 25.10.2009, five injuries are noticed on

external examination, out of which, two were simple in nature and three were grievous. There were two fractures of mastoid bones and temporal bone. It is to be noted that the incident has taken place around 1.30pm. However, he could not be shifted from that place because the applicants/accused and the supporters of Sadashiv Pol did not allow the police to shift the injured constable from that spot. It appears he was lying there for a few hours. His hands and legs were tied.

6. He was shifted from civil hospital, Satara as his case was serious to Command hospital, Wanavdi, Pune for treatment. His FIR could not be recorded on the same day though he was so much injured but because he was not conscious, it was recorded two days later. The prosecution has produced photographs of the complainant. It shows that he was lying unconscious. His hands and legs were tied. There was bleeding from his body. He was in the uniform when he was assaulted. His belt and cap were lying and moreover his 303 gun was broken in two pieces. This shows the force of the attack. His statement was in the nature of dying declaration which was recorded by the police. This shows that there was prima facie, there was a danger to his life. I have no doubt prima facie that this incident has taken place and the police constable was attacked. It appears that in order to screen the offenders, the other complaint was given and therefore, I am not inclined to consider any aspect of the cross

case which is registered at the instance of Sadashiv Pol. The learned Prosecutor informed the Court that the Investigating Officer has filed 'B' summary in the said case of 92 of 2009 on 30.5.2015 and the Presiding Officer has issued notice to the complainant Mr.Sadashiv Pol and the matter is pending before the Court.

7. I was surprised to see that in the case which was registered in 2009, the accused were not arrested for six years. Generally, if there is a considerable time gap in the registration of the offence and moving an application for pre-arrest bail, as the accused are not arrested by the police, it is to be accepted that the police do not require the custody of the accused persons and such application can be considered for pre-arrest bail. I, therefore, asked the learned Prosecutor to call the Investigating Officer and I directed the prosecution to file affidavits of the Investigating Officer, pursuant to which Maruti Shamrao Patil, Dy. S.P., State CID Unit, Kolhapur and Machindra Ramchandra Thite, Police Inspector, Nijampura police station, Bhiwandi, Thane City. have filed their affidavits. Mr.M.R. Thite was the Investigating Officer from 2010 to 2013 i.e., nearly for three years. I have gone through the affidavits. Nowhere the police have stated that they did not want to arrest the applicants/accused. On the contrary, from the record, it is revealed in the beginning that the investigation was conducted by one Shri Vasant Jadhav, SDPO, Phaltan during the period of

28.10.2009 to 21.11.2009. Thereafter, the investigation was transferred. This being a sensitive case involving relatives of ex-MLA of the then ruling party, the case was transferred to State CID in November, 2009. Two Investigating Officers came for short time and then, Mr.Thite, Police Inspector, took charge on 11.6.2010. He was in charge of this matter for three years. Thereafter, other two officers came for short periods of three months and five months and the present Investigating Officer Mr.M.S. Patil, Dy.S.P., State CID unit, Kolhapur, took charge of this case since after 13.4.2014. It is pointed out that as per the CID Manual, a procedure is required to be followed by the Investigating Officer to seek approval of the senior officers for arresting the accused and, therefore, Mr.Thite applied for such approvals. As per the outward record, which is supplied to the Court – first on 9.9.2011, then on 29.12.2011, 6.8.2012 and 10.1.2013. However, no approval was given by the senior officers, namely, Mr.Suresh Dodamani, S.P., CID, Kolhapur Range, Kolhapur, who never forwarded these letters to the higher authority. Thereafter, the letters were also addressed to various police officers namely, Addl. D.G., CID S.P.S. Yadav, Ashok Dhivre, S.P. Yadav, Special IGP CID Shri Prakash Mutyal, Shri Suresh Dodamani, S.P., CID., Kolhapur Range, Kolhapur. It is informed that approval to arrest was received on 27.5.2015 from Additional D.G., CID and thereafter the first arrest was done on 6.6.2015. Taking into account this record, I have no hesitation to hold prima face that it is a case

wherein lot of political influence was used by Sadashiv Pol, ex-MLA, to save the real offenders from arrest. This case is a mirror of the condition of law and order in the State of Maharashtra and how under current of political pressure suppresses and controls the police force in not taking action against the real culprits. Though nobody has come forward against the applicants/accused or the ex-MLA, that they have pressurized the witnesses and in affidavits also there is no mention of political pressure, this Court is fully convinced that the reason for not giving approval to arrest for so many years and not arresting the applicants/accused for so many years is obviously due to political pressure. The on duty police constable was brutally assaulted out of political arrogance and yet was not protected by his seniors in the same force. However, Court values a dignity of on duty constable and protects him.

8. Under such circumstances, as the offence is serious and considering the nature and the manner in which the offence was committed, by following the principles of section 438 of the Criminal Procedure Code, I am not inclined to grant pre-arrest bail to the applicants/accused except applicant/accused Krushna @ Kisan Ganpat Pol. On perusal of the statements of the witnesses, his name is not mentioned and no role is attributed to him and hence, he is granted pre-arrest bail on the following conditions:

- i) In the event of arrest, the applicant/accused Krushna @ Kisan Ganpat Pol shall be released on bail upon furnishing P.R. Bond in the sum of Rs.20,000/-, with one or two sureties in the like amount;
 - ii) The said applicant/accused shall not tamper with the evidence;
 - iii) The said applicant shall not indulge into any kind of offence while on bail;
 - iv) The said applicant shall cooperate with the Investigating Officer and attend the concerned police station on every Monday between 2 pm to 4pm, till filing of chargesheet.
9. The application of all the other accused except Krushna @ Kisan Ganpat Pol is hereby rejected.
10. Anticipatory Bail Application stands disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)