

Anand

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

BAIL APPLICATION NO.2318 OF 2014

Ananta Sudam Patil .Applicant

V/s.

The State of Maharashtra .Respondent

Mr.P.M.Pradhan, Senior Counsel i/b.
Mr.S.S.Patil, Advocate, for the Applicant
Mrs A.A.Mane, APP, for the Respondent - State

CORAM : P.D.KODE, J.

DATE : 5TH JANUARY, 2015

P.C.

. Heard.

2. The prayer for bail made by accused No.2 in the charge sheet submitted by the Manpada Police Station as a result of investigation of C.R.No.301 of 2014 is objected by the learned APP on the ground of involvement of the applicant in commission of the offences committed by the members of unlawful assembly is squarely borne out from

the material collected during the course of investigation in the shape of the FIR and the statements of five eye witnesses viz. Dnyandeo Kene, Rakesh, Vishal, Manish & Amit Kene. Learned APP submitted that the post mortem notes reveals that the deceased has sustained as many as 21 injuries. It is, thus, contended that considering in-depth involvement of the applicant in commission of the offences which are punishable with death or imprisonment for life, his prayer for bail be negatived.

3. On the contrary, Mr.Pradhan, learned counsel for the applicant pressed the prayer for bail on the ground of the first informant having suppressed the real story which is spelt from the counter FIR about the same incident lodged by Mukesh - charge sheeted accused No.1 against rival party. It is urged that said FIR reveals that the deceased who is an externee had been to the office of the

charge sheeted accused No.1, who is Sarpanch. It is submitted that it reveals that the deceased and his companion came armed with deadly weapons like knife etc.. It is urged that it reveals that as they attempted to assault Sarpanch, he tried to escape but sustained injuries to his abdomen and hand. It is urged that it reveals that thereafter, persons at the said place intervened to rescue Sarpanch and in said process free fight occurred in between the parties.

4. Mr.Pradhan, learned counsel for the applicant further contended that even accepting the prosecution story as it is, in FIR the same reveals that arrival of the deceased at said place was unexpected, as in spite of the first informant having objected the deceased for returning to the village, the deceased had been to the village. Mr.Pradhan, learned counsel for the applicant urged that

the relevant part of the FIR reveals that as the deceased and others were passing by the office of the charge sheeted accused No.1, he commenced an assault by means of wooden stick due to earlier rivalry and others thereafter joined him. Mr.Pradhan by drawing attention to the matters stated in the FIR and statements of the eye witnesses urged that said material does not reveal that the applicant was armed with weapon or has used any weapon during the course of the assault. It is urged that even account of the incident as reflected from said material does not reveal even prima facie that common object of said unlawful assembly was to kill or commit murder of victim. Mr.Pradhan, thereafter, drawing attention to the weapons allegedly possessed by two members of unlawful assembly i.e. accused No.2 - stick and accused No.4 - iron rod, urged that even after taking into consideration nature of said weapons possessed by said co-accused,

knowledge cannot be attributed to the applicant or other members of unlawful assembly that they were aware that the offence of murder was likely to be committed in prosecution of the common object of the said unlawful assembly. Mr. Pradhan contended that merely because death had ensued, each member of said unlawful assembly and particularly, the applicant prima facie cannot be held responsible for murder of victim committed. It is contended that said account also reveals that deceased was assaulted by many persons and hence, merely because he succumbed to death would not lead, even to prima facie conclusion of the applicant being responsible for the offence of murder. He urged that considering the acts committed by the applicant i.e. giving of fist and blows and none of the witnesses having stated that he has attacked upon head of the deceased, the said fact considered with cause of death as

revealed from the post mortem report i.e. head injury clearly leads to the conclusion that prima facie, the applicant cannot be held responsible for the offence of commission of murder of deceased.

5. Careful perusal of the charge sheet and particularly, the statements of the eye witnesses prima facie support the submission canvassed by the learned counsel for the applicant. As a matter of fact, considering the story alleged in the cross FIR, the submissions canvassed that the first informant has not disclosed the true fact cannot be said altogether devoid of merit. At any rate, the material collected during the course of investigation being prima facie insufficient for coming to the conclusion that members of unlawful assembly were entertaining common object of killing the deceased, the prayer for bail deserves consideration. Such prima facie

conclusion is obvious as even as per the story stated in the FIR, it appears that it was sudden incident occurred when charge sheeted accused No.1 had come across with the deceased and externed person walking in front of his office.

6. Resultantly, the Bail Application is allowed. The applicant is directed to be released on bail on his furnishing P.R.Bond in the sum of Rs.1,00,000/- with one or two solvent sureties to make up like amount and subject to conditions that after his release the applicant shall (i) not enter Sonarpada without prior permission of the trial Court; (ii) inform the place of his abode to the investigating officer; (iii) attend the investigating officer on every Monday in between 11:00 a.m. and 01:00 p.m. until further orders; (iv) not indulge in any activity of tampering the prosecution material

and/or intimidating, coercing, threatening or pressurizing the prosecution witnesses & (v) not misuse the bail granted to him by this order for committing any other offence and/or for fleeing away.

7. The Bail Application stands disposed of accordingly.

(P.D.KODE, J.)