

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [BA] No.97 of 2015

(Yogesh Manohar Kayande and another
vs.

The State of Maharashtra, through P.S.O. Malegaon, District Washim)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. R.M. Daga, Advocate for the Applicants.
Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 3, 2015.

Heard Mr. Daga, the learned Counsel for the applicants.

The applicants are before this Court seeking their enlargement on bail in connection with Crime No.74 of 2014, registered at Police Station Malegaon, District Washim for the offences punishable under Sections 307, 143, 147, 148, 149, 336, 324, 323 of the Indian Penal Code. Though initially the offence was registered under Section 307 of the Indian Penal Code, it seems that on the death of the victim Digambar, Section 302 of the Indian Penal Code is added.

The learned Counsel for the applicants invited my attention to the copies of reports placed on record. The report lodged at the instance of applicant no.2-Manohar, on whom Crime No.73/2014 is registered and report against these applicants is at the instance of Sau. Vandana Gholve, of which

the Crime No.74/2014 is registered. The submission of the learned Counsel for the applicants is, report lodged at the instance of Sau. Vandana is a counter blast to the report lodged by applicant no.2. He submits that one of the accused viz. Radheshyam Andhale was before this Court with a prayer of enlargement on bail in Criminal Application No.21/2015 and this Court had an occasion to consider the report lodged at the instance of Sau. Vandana and the report lodged at the instance of Manohar-applicant no.2. The learned Counsel submits that the report lodged at the instance of applicant no.2 is prior in point of time. He further submits that the report was lodged at the police station at about 07:30 p.m. The perusal of this report shows that on account of some agricultural activity, a dispute arose. Digambar Gholve was carrying an iron rod, whereas Pandurang and Vitthal were carrying swords. In the report lodged at the instance of Manohar, it is stated that Yogesh received severe injuries by the assault of sword and Pandurang, who was also carrying sword, gave sword blow to Radheshyam. The learned Counsel submits that the applicants are arrested on 23/06/2014 and since then they are behind the bars. He further submits that applicant no.1 and applicant no.2 were subjected to an attack and it is only their fortune that Yogesh was surviving. The learned Counsel then invited my attention to the injury certificates issued by Rural Hospital, Malegaon showing six

incised wounds received by Yogesh Kayande, whereas Manohar Kayande received one incised wound. It is the submission of the learned Counsel that Pandurang and Digambar, who themselves were the aggressors and to cover up the acts of Pandurang and Digambar, a report was lodged by Sau. Vandana. He thus submits that as the investigation is now complete, the applicants, who are behind the bars for more than six months and as all the necessary material is collected by the investigating agency on the backdrop of a serious dispute between the parties and the fact that Pandurang and Digambar themselves were aggressors and were carrying deadly weapons like sword, the applicants be enlarged on bail.

Mr. Khan, the learned A.P.P. vehemently opposes the application. The learned A.P.P. submits that Digambar Gholve lost his life, who had received as many as 15 injuries. He further submits that the other victim Pandurang received three incised wounds.

I have gone through the order passed by this Court in Criminal Application [BA] No.21/2015. The factum of the counter cases registered against each others is taken into consideration by this Court in the Criminal Application No. 21/2015 in detail, and as such no need to refer that aspect again. The material placed on record shows that the applicant no.1-Yogesh received six injuries of incised wounds by sharp

edged weapon. The report lodged at the instance of applicant no.2 spells out that Pandurang was carrying sword, whereas Digambar was armed with an iron rod. Though the learned A.P.P. submitted that Pandurang is one of the victim of the attack by these applicants and received serious injuries, perusal of the certificate issued by the Rural Hospital, Washim shows that Pandurang received three incised wounds by sharp weapon and the report lodged at the instance of Vandana refers to sticks and iron rods. She states in her report that her husband-Pandurang and her father-in-law-Digambar received blows of iron rod and stick. Thus, when the report of an eye-witness and the informant, claiming herself to be an injured, refers no sharp edged weapon used for an assault on Pandurang, the medical certificate referring to injuries received by Pandurang by sharp edged weapon leads to an element of an exaggerated version in the report. No doubt, it is the case of free fight between two warring groups. But considering the material placed on record, it reveals that the party led attack on these applicants was in aggression.

The necessary material is collected by the investigating agency. This Court on the backdrop of the facts reflected in these two reports, which was the backdrop of Criminal Application No.21/2015, allowed the application of Radhyesham Andhale. Considering this aspect, in my opinion,

the learned Counsel for the applicants has made out the case. The apprehension of the State can be taken care of by imposing certain conditions on the applicants.

In the result, the application is allowed. The applicants be released on bail on their furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) each with one or two sureties in the like amount for each on the following conditions.

- i. The applicants to attend Malegaon Police Station, District Washim on every Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of their attendance duly countersigned by the Police Station Officer or the Investigating Officer, till commencement of the trial.
- ii. The applicants shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicants to submit their residential addresses and contact numbers, such as phone/mobiles numbers, to the investigating agency or in case of change.
- iv. In case the applicants are moving out of the area of Malegaon Police Station, they shall take permission and inform the concerned Police Station about their visit to other place.

In case of any breach of the conditions by the applicants, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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