

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1490 OF 2015
WITH
CRIMINAL APPLN/1868/2016 IN WP/1490/2015**

THE STATE OF MAHARASHTRA.
VERSUS
ABDULAKHA @ BABAJANI LATIFKHA DURRANI AND
OTHERS.

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APP for Petitioner : Mr N T Bhagat
Advocate for Respondents 1-40 : Mr R.S.Deshmukh

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WITH

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CRIMINAL APPLICATION NO.1868 OF 2016

PRABHAKAR S/O RUSTUMRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr S J Salunke Advocate for applicant.
Mr. N T Bhagat APP for Respondent State

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CORAM : V.K. JADHAV, J.

Dated: July 26, 2016

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PER COURT :-

1. The petitioner-State of Maharashtra is challenging the Judgment and order dated 28.8.2015 passed by the learned Extra Joint Ad-hoc Additional Sessions Judge, Parbhani in Criminal Revision Application No.97 of 2014 and 107/2014 alongwith the order dated 17.10.2014 passed by the learned Judicial Magistrate First Class,

Pathri in Crime No.154/2014 in bail application wherein the learned Judicial Magistrate First Class, Pathri was pleased to reject the Police Custody Remand requested by the Investigating Officer and granted bail to the Respondent-accused persons.

2. Brief facts, giving rise, to the present writ petition are as under :-

On the basis of the complaint lodged by one Prabhakar Rustumrao Shinde Crime bearing registration No.154/2014 came to be registered at Police Station Pathri District Parbhani for the offences punishable u/s 307, 452, 143, 147, 148, 149, 188, 324, 294, 323, 109, 114, 427, 506 of the Indian Penal Code and section 135 of the Bombay Police Act read with Section 7 of Criminal Law Amendment Act. It has alleged in the complaint that, the informant is a Taluka President of Congress party and on the day of incident, he was in his house alongwith family members. On 15.10.2014 at about 17.45 hours (05.45 p.m) he heard noise of abuses outside of his house and therefore, he came in the Courtyard of his house alongwith his son

and cousin. At that time, some of the respondent/accused including the respondent No.1- accused M.L.A Babajani Durani alongwith 100-125 persons came there. All of them were armed with sticks, hockey sticks and rod etc. They have abused the informant as to why he is canvassing for the congress party and further threatened him to kill. At that time, one Police Constable Umesh Barhate alongwith other staff members of Pathri Police Station came there and tried to stop the said mob at the gate of the house of the informant, however, somebody has given blow of hockey stick on the head of said Police Constable Barhate and he sustained injuries. Thus, the informant, his cousin and son frightened and returned to the house and tried to close the doors. It has further alleged in the complaint that, at that time, present respondent no.1 Babajani and one another accused Junaid Durani pushed the door, entered into the house and said accused Junaid Durani gave a blow of hockey stick on the face of the informant. It has further alleged in the complaint that other persons also beaten him, his son with the help of hockey stick and other sticks. They

have also caused damage to the house of the informant.

3. On the basis of these allegations, crime as aforesaid came to be registered at Police Station Pathri and the Investigating Officer has effected arrest of the respondent/accused persons and produced them before the Judicial Magistrate First Class, Pathri on 17.10.2014 seeking Police Custody Remand for five days. The learned Judicial Magistrate First Class, Pathri pleased to reject the said request with the observations that the ingredients of Section 307 are not attracted in the given set of allegations and accordingly remanded the respondent/accused to M.C.R. Furthermore, on the same date respondent/accused moved an application before the learned Judicial Magistrate First Class, Pathri for getting release on bail and the learned Magistrate has allowed their application for bail and accordingly the respondent/accused came to be released on bail.

4. Being aggrieved by the said order dated 17.10.2014 passed by the learned Judicial Magistrate First Class,

Pathri, the petitioner-State has approached the Sessions Court, Parbhani by filing two Criminal Revision Applications. Criminal Revision Application No.97 of 2014 which came to be filed against the order refusing Police Custody Remand and another Criminal Revision Application No.107/2014 filed against the order of granting bail to the Respondent/accused persons. The learned Extra Joint Ad-hoc Additional Sessions Judge, Parbhani, by common Judgment and order dated 28.8.2015 rejected both the Criminal Revision Applications. Hence, this Writ Petition.

5. The learned APP appearing for the Petitioner-State submits that, the order dated 17.10.2014 passed by the Judicial Magistrate First Class, Pathri, and the order dated 28.8.2015 passed by the learned Extra Joint Adhoc Additional Sessions Judge, Parbhani, are erroneous and against the settled principles of Law. The learned Magistrate has not considered the grounds mentioned in the P.C.R Yadi for grant of P.C.R. Even though there are allegations in the complaint about the use of the weapons like hockey sticks, sticks and iron

rod in the assault, the learned Magistrate erroneously remanded the respondents/accused in MCR and further released them on bail. The Revisional Court ought to have set aside the order refusing PCR passed by the Magistrate and ought to have cancelled the bail granted to the respondents/accused. The learned APP submits that the learned Magistrate as well as the learned Extra Joint Adhoc Additional Sessions Judge, Parbhani failed to apply their minds which resulted into failure of justice. The learned Magistrate has not considered the antecedents of the respondent/accused no.1, who is an influential person. The learned APP submits that investigation has been grossly affected by not giving an opportunity to interrogate the respondents/accused persons in custody and to make serious efforts to recover the weapons from them during the course of investigation. Consequently, entire investigation came to be hampered.

6. The learned counsel for the intervenor-original complainant submits that, the Magistrate must refrain himself from considering the application u/s 437 of

Cr.P.C. when offence is punishable under death or imprisonment for life. Even though, there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by the Court of Sessions, it would be proper and appropriate that in such a case the Magistrate would direct the accused persons to approach the Court of Sessions for the purpose of getting release on bail. In this case, the learned Magistrate has passed most cryptic order and by refusing to grant PCR released the respondents/accused persons on bail by observing that, charge u/s 307 is not attracted. The learned counsel submits that, the order passed by the Magistrate is unjustified, illegal and perverse order. Respondent No.1/original accused is an influential person and his antecedents are not clear. There are many crimes registered against him and his associates in the concerned Police Station. The learned counsel submits that, therefore, an arbitrary and wrong exercise of discretion of the Magistrate is required to be corrected. The learned counsel has repeatedly made submissions that such an unjustified order gives wrong

message to the Society and it has got serious consequences and the interest of the justice would also required that such a perverse order be set aside and bail granted to the respondents/accused be cancelled. Learned counsel submits that this Court in Criminal Application No.27 of 2015 alongwith connected applications in paragraph No.8 of the order also made observations that, the learned Judicial Magistrate First Class discussed the material and formed opinion that Section 307 of I.P.C is not at all applicable in this case. Such exercise is not at all expected from the Judicial Magistrate First Class. Only under special circumstances mentioned in section 437 of Cr.P.C. the Judicial Magistrate First Class can grant bail when the offence is punishable with life imprisonment or death. Special circumstances were not considered but the learned Judicial Magistrate First Class by considering the few affidavits granted bail to the present respondents/accused persons.

7. The learned counsel for the complainant in order to substantiate his contentions places reliance on the

following cases :-

- I] Pokar Ram Vs. State of Rajasthan and others. Reported in 1985 Supreme Court 969.
- II] Puran Vs. Rambilas and another reported in AIR 2001 Supreme Court 2023.
- III] Pralhad Singh Bhati Vs. NCT Delhi and another reported in AIR 2001 Supreme Court 1444.
- IV] Ambarish Rangshahi Patnigere and ors. Vs. State of Maharashtra reported in 2010 BCI 9.
- V] Vaijanath Devappa Longaonkar Vs. State of Maharashtra and ors. Reported in 2011 BCI 152.

8. The learned counsel for respondents/original accused submits that, the allegations made in the complaint hardly attracts penal provisions of Section 307 of the Indian Penal Code. It has alleged in the complaint that more than 125 persons gathered near the house of the informant and out of them, only one or two persons assaulted the informant and his son with the help of stick or hockey stick and one unknown person assaulted the police constable by giving a blow of stick on his head. Said Police Constable has filed a complaint on the basis of which a separate crime came

to be registered in the same police station. In the said complaint, constable has alleged about formation of an unlawful assembly of certain persons, however, he has not alleged even about the presence of respondent no.1 herein. The learned counsel submits that, even though there are allegations about the assault with the help of hockey stick by the members of such an unlawful assembly, the informant and his son sustained injuries like abrasions etc. The learned Magistrate after giving both the sides an opportunity of hearing came to the conclusion that the material placed before him is not sufficient to disclose an offence punishable u/s 307 of the Indian Penal Code and, as such, it was not a case exclusively triable by the Court of Sessions. On this background, in his wisdom, the learned Magistrate has refused the PCR and granted bail to the respondents/original accused mainly on the ground that the material placed before him is not sufficient to attract the penal provisions of section 307 of the Indian Penal Code. Furthermore, a bunch of 14 accused persons including a son and nephew of the present respondent no.1 moved an application before the

Sessions Court for grant of anticipatory bail. The sessions Court has granted anticipatory bail to 12 accused and refused the bail to the son and nephew of the present respondent no.1 on the ground that there exists a *prima facie* case against them. Thereafter, those two persons came to be arrested and also released on bail by this Court in Criminal Application No.27 of 2015. Learned counsel submits that, charge sheet came to be filed before the Magistrate during the pendency of Criminal Revision Application Nos.97/2014 and 107/2014 before the Extra Jt. Adhoc Additional Sessions Judge. Thereafter, in due course, the case is also committed to the Sessions Court. The learned Counsel submits that the question raised in this petition thus now remained to be an academic question.

9. In case of **Puran Vs. Rambilas and another with Shekhar and another Vs. State of Maharashtra and another** reported in **2001 Cri L.J. Page 2566** (supra) relied upon by the learned counsel for intervenor/original complainant, the Apex Court in paragraph No.10 of the Judgment made following

observations :-

“10. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconduted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) reported in AIR 1978 SC 179. In that case the Court observed as under:-

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under [S. 439](#) (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.”

10. I have carefully gone through the contents of the complaint wherein names of 1 to 16 accused have been mentioned and a general reference is given to 100-125 persons from the area known as Gulshan Nagar. It has alleged in the complaint that all persons armed with weapons like sticks, hockey sticks, iron rod. It has

further alleged that those persons started giving the informant abuses on account of some political reasons. It further appears from the allegations made in the complaint that, only two persons assaulted the informant and his son with the help of hockey stick. There are general allegations that other persons also beaten the informant and his son with the help of hockey stick and sticks, however, specific role has been assigned to one Junaid Durani and Tabrej Durani. It is not out of place to mention here that, said two persons were not the persons arrested by the police and produced before the Court immediately after the incident. Furthermore, in respect of same incident, one Police Constable Umesh Barhate has lodged a complaint and on the basis of his complaint a separate crime came to be registered. Said complaint is also silent about the presence of present respondent no.1. It is a part of record that the informant and his son sustained simple injuries like abrasions etc. It is an usual experience that, in a complaint arises out of some political rivalry the element of exaggeration and false implication exists. The learned Magistrate after hearing both the sides and

after considering the material placed before him including the affidavits of certain persons, refused to grant P.C.R. and further released the respondents/accused on bail. Thereafter, near about 12 persons came to be released on anticipatory bail and the learned Sessions Court has refused to grant anticipatory bail to said Junaid Durani and and Tabrej Durani for the reason that specific role has been assigned to them in the complaint. Said two persons also came to be released on bail by this Court vide order dated 25.2.2015 in Criminal Application No.27/2015 with connected applications. Thereafter, the learned Extra Jt. Adhoc Additional Sessions Judge, Parbhani while deciding Criminal Revision Application No.97/2014 and 107/2014 has observed that after a period of 10 months from the registration of Crime, exercise of granting PCR under the garb of getting some informations about the crime in general and recovery of some objects is a futile exercise. It is not out of place to mention here that during the pendency of the said revision applications before the Sessions Court, charge sheet came to be filed before the Magistrate and at

presently the case is now committed to the Sessions Court. Thus, the question of unjustified, perverse or illegal order passed by the Magistrate has now become an academic question.

11. So far as Criminal Application No.1868/2016 is concerned, it is filed for permission to assist the learned APP while conducting hearing of Writ Petition No.1490/2015. For the reasons stated in the application, application is allowed and the learned counsel is permitted to assist the learned APP during the course of hearing of Cri WP 1490/2015. Application accordingly disposed of.

12. In view of the above discussion, I proceed to pass the following order.

O R D E R

Writ Petition is hereby dismissed.

(V.K. JADHAV, J.)

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