

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

23 CRIMINAL APPLICATION NO. 2930 OF 2016

MADHAV S/O NANA @ NANASAHEB INGALE

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. R.G.Joshi, Advocate for Applicant.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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**WITH
CRIMINAL APPLICATION NO. 3185 OF 2016**

**RAJENDRA S/O BABASAHEB GANGURDE
& ANR.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Shaikh Mazhar A.Jahagirdar, Advocate for
Applicants.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 22nd AUGUST, 2016

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PER COURT :

1. Applicants/accused in Crime No. 352/2015 registered at Shrirampur City police station, Tq. Shrirampur, Dist. Ahmednagar for the offences punishable u/ss 302,307,323,326,143,147,148,149 of the Indian Penal Code are praying for releasing them on bail after filing of the charge sheet.

2. Heard learned counsel for the applicants. He argued that name of applicant Madhav Ingale is not figured either in the F.I.R. or in the statements of witnesses. It is further argued that the history disclosed by deceased Akash Bengare to the Medical Officer is that of assault by unknown persons. This casts a shadow of doubt on the prosecution case so far as present applicants are concerned. It is further argued that alleged eye witness Vikas Tribhuwan, in his statement u/s 164 of the Code of Criminal Procedure, has only stated that applicant Rajendra Gangurde had assaulted him. Co-accused Rahul Yadav is not named by him. Therefore, according to the learned counsels for the applicants, considering the role attributed to the present applicants, offence punishable u/s 302 of the Indian Penal Code is *prima facie* not made out.

3. Learned A.P.P. opposed the application by contending that the entire episode of assault on deceased Akash Bengare and injured Vikas Tribhuwan is captured in the CC T.V. footage, which is seized by the Investigating Officer. She drew my attention to the oral dying declaration allegedly

made by Akash Bengare and argued that complicity of the applicants/accused in the crime in question is well established.

4. Perused the charge sheet. The incident in question took place on 30/11/2015 at and in front of hotel President at Shrirampur. Akshay Dhawale, Sagar Pagare and Vikas Tribhuwan were having drinks at that hotel. Subsequently Akash Bengare [since deceased] joined them. Initially, 2 unknown persons were occupying the nearby table in that hotel and subsequently they were joined by accused Sagar Kudale and 4 – 5 other persons. Akshay Dhawale and Sagar Pagare quit the boos session as they were hungry. Vikas Tribhuwan and Akshay Bengare continued it.

5. Subsequently, according to the prosecution case, accused Sagar Kudale questioned Akash Bengare as to who had thrown the liquor bottle. Then, according to the prosecution case, Sagar Kudale accompanied by applicant Rahul Yadav and Rajendra Gangurde with unknown accused started assaulting Akash Bengare and Vikas Tribhuwan. Ultimately, because of complications arose out of head injury, Akash Bengare succumbed to the injuries on 09/12/2015.

6. Statements of injured eye witness Vikas Tribhuwan recorded u/s 164 of the Code of Criminal Procedure shows that applicants Rahul Yadav and Rajendra Gangurde were the assailants. He has also stated that 2 persons obstructed him on the door and assaulted him without

naming those persons. Effect of omission will have to be construed at trial after seeking explanation of the witness.

7. F.I.R. lodged by Mohini Laxman Khemnagar reflects oral dying declaration of her deceased brother implicating applicants Rahul Yadav and Rajendra Gangurde.

8. Charge sheet shows that the incident of assault was captured in CC T.V. Calender of evidence annexed to the charge sheet mentions that CC T.V. footage shows assault by all 3 applicants. Panchanama of seizure of CC T.V. footage shows that applicants Rahul Yadav and Rajendra Gangurde were participating in the assault apart from one unknown person.

9. Charge sheet *prima facie* shows that the accused persons had formed unlawful assembly with common object. This is seen from the acts done by the members of unlawful assembly in assaulting the deceased and the victim in the hotel as well as after chasing them out side the hotel. Therefore, individual role of the applicants pales into insignificance and they became vicariously liable as provided u/s 149 of the Code of Criminal Procedure.

10. In this view of the matter, as the offence punishable u/s 302 of the Indian Penal Code is punishable with death or life imprisonment, no case for bail is made out. Hence, the applications stand rejected.

11. Needless to mention that the observations made above are *prima facie* in nature having no bearing on the trial of the case against the present applicants.

[A.M.BADAR, J.]

KNP/Cr.Apln. 2930...2016