

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

7 CRIMINAL APPLICATION NO. 4059 OF 2016

WALMIK S/O MURLIDHAR PATIL

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Satej S.Jadhav, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 25th AUGUST, 2016

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PER COURT :

1. Applicant/accused in Crime No. 150/2015 registered at Pachora police station, Dist. Jalgaon for the offences punishable U/ss 302,307,325,324,143,147,148,149, 504,506 of the Indian Penal Code, by this application is claiming bail after filing of the charge sheet.

2. Heard learned counsel appearing for the applicant. By taking me through the averments in the F.I.R., learned counsel submitted that the F.I.R. lodged by injured eye witness to the incident in question does not show that the

applicant had shared common object of commission of murder of Akosh Maharu Patil. Learned counsel argued that accepting the F.I.R. as it is, it can at the most be said that the applicant had shared common object of rioting for helping Sarpanch Bhagwat Patil of the village. It is submitted that the applicant is 60 years old and his arrest was at the time of his admission at the hospital as indoor patient for treatment of liver ailment.

3. Learned A.P.P. opposed the application by contending that the accused persons have formed an unlawful assembly with common object of murdering Akosh Patil, who was quarreling with Sarpanch Bhagwat Patil and in that process they attempted to commit murder of prosecution witness and in fact murder of Akosh Patil.

4. Perused charge sheet. F.I.R. lodged by Anna Maharu Patil goes to show that there are 2 political groups in village Sarve (Bk.). Sarpanch Bhagwat Patil belongs to Shiv Sena whereas deceased Akosh Patil was belonging to Rashtrawadi Congress party.

5. According to prosecution case, on 09/09/2015 work of laying down metal on the road was going-on at the instance of Gram Panchayat. At that time, Akosh Patil [since deceased] told Sarpanch Bhagwat Patil to fill in the ditch in front of his house. Thereafter, according to prosecution case, Sarpanch Bhagwat Patil started abusing Akosh Patil. Altercation started between them, which ultimately took turn of riot. As seen from the charge sheet, co-accused Bhushan

Patil, applicant Walmik Patil, his sons, other relatives including ladies from their family rushed on the spot. This was for helping Sarpanch Bhagwat Patil. Charge sheet also reflects that then Anna Patil, his wife Nirmalabai and their relatives also rushed to the spot to take side of Akosh Patil. F.I.R. as well as statements of witnesses reflect that thereafter there was assault at the instance of accused persons, who were armed with sharp edged weapons. It is alleged that during that riot, applicant Walmik Patil gave a single blow of knife on Anil Patil. According to the prosecution case, co-accused Santosh Walmik gave blow of knife to the injured Ganesh Patil. Sarpanch Bhagwat Patil caught hold of Akosh Patil and co-accused Bhushan gave blow of Kukari on his abdomen causing his death.

6. Tone and tenor of statements of witnesses *prima facie* reflect that there was free fight among 2 groups, which was ensued because of altercations between Sarpanch Bhagwat Patil and Akosh Patil.

7. The prosecution has invoked section 149 of the Indian Penal Code in order to make the applicant vicariously liable for the acts done by all members of the unlawful assembly. An object is entertained in the human mind, but being a merely mental attitude, no direct evidence can be available for proving common object. Common object can be gathered from the act which persons commit and the result therefrom. Common object can reasonably be collected from the nature of the assembly, weapons the assailants had

carried and behaviour of members of such assembly before or after the incident.

8. Viewing from this angle, if charge sheet is perused then the role attributed to the present applicant is that of giving single blow to Anil Patil. F.I.R. as well as statements of witnesses do not show that after such single blow, applicant had participated further in the riot causing injuries to other members of the prosecuting party. This becomes important as a sharp edged weapon is attributable to the applicant. Perusal of the injury certificate of Anil Patil goes to show that he had suffered 3 injuries, out of which 2 are simple in nature, whereas one to the abdomen is stated to be grievous. Perusal of statements of witnesses goes to show that the applicant is stated to be author of only one injury on Anil Patil.

9. As meticulous examination of statement of witnesses from the charge sheet does not reflect that apart from causing one injury to Anil Patil, no other overt act is attributed to the present applicant for the crime in question. At this stage, it can not be inferred that the applicant had shared common object of causing murder of Akosh Maharu Patil. In fact, except one blow to the injured Anil Patil, no participation of the applicant in the entire incident is reflected in the charge sheet.

10. In this view of the matter, further pre-trial detention of the applicant in this matter, which appears to

have been arisen out of political rivalry between the main accused and the deceased, is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Walmik s/o Murlidhar Patil in Crime No. 150/2015 registered at Pachora police station, Dist. Jalgaon for the offences punishable U/ss 302,307,325,324, 143,147,148,149,504,506 of the Indian Penal Code be released on bail on executing P.R. Bond of ₹ 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall co-operate the trial Court in expeditious disposal of the trial against him.

[A.M.BADAR, J.]