

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

CRIMINAL REVISION APPLICATION NO. 190 OF 2015

Giridhar s/o Baba Rajpure,
Age: 55 years, Occ: Agri.,
R/o. Village Umbar Vihira,
At and Po. Tamba Rajuri,
Tq. Patoda, Dist. Beed.

...Applicant

versus

1. Sunil s/o Madhav Ghumre,
Age: 25 years, Occ: Agri.,
Village Umbar Vihira,
At and Po. Tamba Rajuri,
Tq. Patoda, Dist. Beed.
 2. Madhav @ Madhukar s/o Sarjerao Ghumre,
Age: 50 years, Occ: Agri.,
Village Umbar Vihira,
At and Po. Tamba Rajuri,
Tq. Patoda, Dist. Beed.
 3. Bhausahab s/o Sarjerao Ghumre,
Age: 53 years, Occ: Agri.,
Village Umbar Vihira,
At and Po. Tamba Rajuri,
Tq. Patoda, Dist. Beed.
 4. The State of Maharashtra ...Respondents
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- Mr. H.V. Tungar, Advocate for applicant
Mr. R.G. Hange, Advocate for respondent Nos. 1 to 3
Mr. R.V. Dasalkar, A.P.P. for respondent No. 4
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CORAM : N.W. SAMBRE, J.

DATE : 13th APRIL, 2016

ORAL ORDER :

The present respondents are charged sheeted for an offence punishable under Sections 307, 326, 323, 504, 506 read with

Section 34 of the Indian Penal Code, as the complainant on 23/07/2015 lodged complaint alleging that he was assaulted by stones, sticks and iron rods, resulted into rupture of his kidney. The complainant thereafter was operated and his kidney came to be removed as the same was functionless.

2. In the above referred back ground, the respondents accused, who were arrested were released on regular bail on 07/10/2015 after their arrest on 15/09/2015 for the second time in an offence punishable under Section 307 of the Indian Penal Code.

3. While questioning the order of grant of regular bail, Mr. Tungar, learned Counsel for the complainant, relying upon the judgment of the Apex Court in the matter of ***Pratapbhai Hamirbhai Solanki vs. State of Gujarat and another*** reported in ***2012 AIR SCW 5567***, would urge that seriousness of the offence is one of the important considerations while exercising the powers under Section 439 of the Code of Criminal Procedure. According to him, the complainant having suffered serious injury resulting into removal of left kidney, the offence is quite serious and there is *prima facie* evidence of involvement of the accused. According to him, the bail needs to be cancelled.

4. Mr. Hange, learned Counsel for the respondents accused would urge that after the charge sheet is filed, the matter is fixed for framing of charge. He would then submit that liberty granted in favour of the respondents accused is not misused by them. He would then submit that intention of the present respondents is also required to be ascertained, as *prima facie* from the first information report, it could be inferred that it was never their intention to damage the kidney of the complainant.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that the complainant was assaulted by the accused persons on 08/07/2015 and was subsequent thereto, underwent an operation for the removal of ruptured kidney. Doctor in the medical certificate has certified that the applicant suffered grievous injury, which might have lost into his life. In the above referred back ground, Section 307 of the Indian Penal Code came to be added.

6. It is then required to be noted that the incident in question has occurred on 08/07/2015, for which the first information report is lodged on 23/07/2015. There is hardly any explanation on record, which explains the delay in lodging first information report. As such, afterthought implication of the accused cannot be ruled out.

Apart from above, the investigation in the matter is already complete and the charge sheet is filed. The matter is fixed for framing of charge and till date, for about last 8 months, the accused have not misused their liberty. Apart from the present crime, there are no criminal antecedents. Perusal of the contents of first information report depicts that there appears to be dispute in relation to Gat number of agricultural land between the applicant and respondents. From the investigation carried out till date, it cannot be *prima facie* inferred that it was intention of the accused to cause damage to the kidney of the applicant.

7. In view of above, the reliance placed by learned Counsel for the applicant-complainant on the judgment of the Apex Court in the matter of ***Pratapbhai Hamirbhai Solanki*** (supra), though appears to be reasonable, however the fact that such serious injury caused to the complainant does not appear to be intentional one.

8. As such, in my opinion, no case for exercising powers under revisional jurisdiction for cancellation of regular bail is made out. The application, in this background, fails and stands dismissed.

[N.W. SAMBRE, J.]