

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 930 OF 2016**

1. Manoj Sadashiv Pol,	
2. Abhay Mohan Pol	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Ashok P. Mundargi, Sr. Counsel i/b Mr. Shekhar A. Ingawale for the Applicants

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

I.O Mr. M. S. Patil, Dy. S.P, C.I.D, Kolhapur, is present

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 4th MAY, 2016

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P for the State.

2. By this application, the applicants seek their enlargement on bail in connection with C.R. No. 95 of 2009 registered with the Dahiwadi Police Station, Satara, for the alleged offences punishable under Sections 307, 333, 395, 353, 341, 342, 427, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code.

3. The incident in question has taken place on 25th October, 2009 at about 1:30 p.m. The complainant is police constable - Kundalik Narayan Tembre, who was on duty to the applicant No. 1's father, who, at the relevant time, was a sitting M.L.A and a candidate contesting the Assembly Elections. According to the complainant, the applicants (not named), some persons from Mardi Village and 4 to 5 other unknown gundas were enraged and were making allegations that because of him, the applicant No. 1's father lost the elections. He has alleged that the accused abused him, assaulted him with fist and kick blows, pelted stones and also assaulted him with sticks. He has alleged that when he fired in the air in self defence, the accused took the rifle from him and assaulted him with the rifle on his head and on his hands, as a result of which, he became unconscious. He has stated in the complaint that he would be able to identify the said persons, if shown.

4. Learned Senior Counsel for the applicants submitted that with regard to the incident of 25th October, 2009, the applicant No. 1's father has also lodged a complaint as against the complainant, in the aforesaid C.R. on

the same day i.e. 25th October, 2009, which was registered vide C.R. No. 92 of 2009, alleging an offence punishable under Section 307 of the Indian Penal Code. He submitted that the present case i.e. C.R No. 95 of 2009 was initially being investigated by the Dahiwadi Police Station and was subsequently transferred to State C.I.D at Kolhapur on 21st November, 2009. He submitted that till 5th June, 2015, no charge-sheet was filed and that only on 5th June, 2015, co-accused Sadashiv Pol came to be arrested in the aforesaid C.R of 2009. He submitted that the complainant had not named the present applicants in the FIR, and that it was only mentioned that the second son of Sadashiv Pol and the two sons of Sadashiv Pol's brother and others assaulted him. He submitted that in the identification parade which was held on 8th October, 2015, the applicants have not been identified by the complainant, although two other constables have identified the applicants, as being present on the spot. He submitted that the said two police constables who have identified the applicants have not attributed any overt act to the applicants and have only disclosed their presence at the spot, at the relevant time. He submitted that investigation is complete and charge-sheet is filed and as such the applicants be enlarged on bail.

5. Learned A.P.P opposed the bail application. He submitted that the complainant was mercilessly assaulted by the applicants and co-accused. He relied on the injury certificate of the complainant in support of his statement. He submitted that the complainant had suffered severe head injuries and multiple skull fractures and was discharged only on 9th November, 2009. He submitted that although the complainant has not identified the applicants, 2 other constables, who were present at the spot have identified the applicants, as being present on the spot at the time of the assault.

6. Perused the papers. The incident is of 25th October, 2009, both the applicants surrendered on 16th September, 2015; and charge-sheet was filed in the said case on 12th December, 2015. Initially, the C.R was registered in 2009 with the Dahiwadi Police Station and was subsequently transferred in November, 2009 to the State CID, Kolhapur. Nothing happened from 2009 till 2015. It appears that the complainant had joined duty, just two days prior to the incident and as such did not know the names of the applicants and as such had stated that the second son of

co-accused Sadashiv Pol and two sons of Sadashiv Pol's brother and others assaulted him. Although, the complainant has stated in his complaint, that he would be able to identify the persons who assaulted him, in the identification parade, which was held on 8th October, 2015, the complainant has not identified the applicants. No doubt, the applicants have been identified by two other constables who were present at the spot, however, no overt act has been attributed to the present applicants.

7. Considering the aforesaid and the fact that investigation is complete and charge-sheet is filed, the applicants are enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicants be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- each, with one or two sureties in the like amount;
- (ii) The applicants shall report to the State CID, Kolhapur, on the first Saturday of every month between 10:00 a.m. to 11:00 a.m for a period of 12 months from the date of their release;

(iii) The applicants shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicants shall inform their latest places of residence and mobile contact numbers within one week of their release and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicants to cooperate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.