

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 424 OF 2016

WITH

CRIMINAL APPLICATION NO. 264 OF 2016

1. Bapu Shankar Kate)
2. Sachin Dada Bhosale).. Applicants
(Orig. accused Nos. 4 & 5)

VS.

The State of Maharashtra .. Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Ms. Shraddha Sawant, Advocate for the applicants.

Mr. Arfan Sait, APP, for the State.

Mr. L.N.Pansare, PSI, Akluj Police Station, Solapur, present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 23rd August, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C.

The applicants herein are arrested on 26th and 27th of November, 2014 respectively in Crime No.229 of 2014 registered at Akluj Police Station, Dist. Solapur. and have been charged-sheeted for the offences punishable under Sections 302, 143, 147,148, 149 120-B, 201, 109 of the Indian Penal Code, under Section 4 read with Section 25 of the Indian Arms Act and under Section 135 of the Bombay Police Act.

2. At the threshold, the learned Senior Counsel appearing for the applicants submits that the persons who were named in the FIR have been granted pre-arrest bail by this Court vide order dated 2.2.2015. Similarly, accused Yogesh has been granted bail by this Court vide order dated 26.10.2015.

3. The learned APP, upon instructions, submits that the orders granting pre-arrest bail in favour of accused Ganesh Sadashiv Bhosale and Sadashiv Janardhan Bhosale have been challenged before the Apex Court.

4. It is the case of the prosecution that on 20.11.2014, Raju Bhosale had lodged a report at the Akluj Police Station, alleging therein that on 20.11.2014, he was standing in front of the Pan shop of his uncle Shivaji

Bhosale. At that time, he had seen the original accused No.1 – Pravin Bhosale, Ganesh Bhosale, Sadashiv Bhosale along with five unknown persons running on the road. At that time, they were armed with deadly weapons like sickle and iron rods, etc. According to the complainant, he had followed the accused for some distance and then had seen them running towards the back side road of his first cousin Rahul Bhosale. He had actually seen all the persons assaulting his cousin and, therefore, he approached the police station and lodged the report.

5. It is pertinent to note that on 5.12.2014, a supplementary statement of the complainant was recorded. In the said supplementary statement, the first informant has alleged that the present applicants had also participated in the ghastly offence and that they had caused homicidal death of Rahul Bhosale.

6. It is also pertinent to note that in fact, the present applicant were already arrested on 26th and 27th of November, 2014. The Court cannot be oblivious of the fact that the complainant was the person who was the panch for scene of offence panchnama. He had identified the dead body of Rahul Bhosale at the time of inquest panchnama. He had co-operated with

the investigating agency. It is not the case of the complainant that the present applicants were not known to him. The learned APP has also expressed her inability, on the basis of the records, to indicate as to why the complainant had not involved the present applicants, although he knew them. In the statement dated 5.12.2014, the complainant had introduced another eye-witness i.e. Jayesh Dhotre. The statement of Jayesh Dhotre was recorded on 30.11.2014 i.e. within 10 days from the date of alleged incident and at that stage, he had not disclosed the names of the present applicants. However, on 5.12.2014, ie.. after recording the supplementary statement of the complainant, for the first time, Jayesh Dhotre had also arraigned the present applicants as persons who had caused homicidal death of Rahul Bhosale along with the original accused No.1. The investigation is completed and charge sheet is filed. The original accused No.1 has been enlarged on bail by the learned Sessions Court sometime in March, 2016. However, the said order has not been challenged by the State.

7. On the basis of the records, the learned Senior Counsel rightly submits that it is an admitted position that Rahul Bhosale had met with homicidal death and, in all probabilities, there is no eye-witness to the incident as the incident has occurred sometime at about 7.45 p.m. It also appears that, according to the learned Senior Counsel, only because the

complainant was aware that there is some dispute between Rahul Bhosale and the accused persons, they have been implicated.

7. Prima facie, it appears that the applicants were arrested on the basis of some suspicion and subsequently the statements of the complainant and Jayesh Dhotre was recorded to arraign them as accused.

8. Be that as it may, on the basis of the material collected by the investigating agency, in the course of investigation, the applicants deserve to be enlarged on bail.

9. The observations made hereinabove are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial as it is restricted to application under Section 438 of Cr.P.C.

ORDER

- (i) The application is allowed.
- (ii) The applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (iii) The applicants shall report to Akluj Police Station on every Sunday

between 10 a.m. to 12 noon till the framing of charge and thereafter shall attend all the dates before the Sessions Court.

Application stands disposed of.

CRIMINAL APPLICATION NO. 264 OF 2016

None appears for the intervener. It appears that on several dates the counsel for the intervenor has not caused his appearance. In view of this, the Intervention Application stands dismissed for want of prosecution.

(SMT.SADHANA S.JADHAV, J.)