

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.882 OF 2016

Sujit @ Pappya Kisan Dhole .. Applicant

Versus

The State of Maharashtra .. Respondent

Mrs.Pranali P. Kakade, Advocate for the applicant.

Ms.S.S.Kaushik, APP for the Respondent State.

PSI Prashant Sampat Tayade from Padgha P.Stn present.

CORAM : PN. DESHMUKH, J.

DATED : 22nd JUNE 2016

P.C. :

1 The applicant who is involved in Crime No.145/2015 registered by Padgha Police Station for the offences punishable under section 302, 307, 147, 148, 149 of IPC and under Section 4, 25 of Arms Act, has filed this application for bail. Learned counsel for the applicant has referred to the copy of charge-sheet, and has contended that the incident has occurred on 7th September 2015 of which report is lodged on the same day by injured eye witness Sainath Gondhale. However, submits that contents of said report are totally in contradiction to the statement of injured Roshan Gondhale whose statement is recorded on 17th November 2015 i.e. almost after two months of the incident. Learned counsel has

further invited my attention to the history of assault given by four injureds and has stated that neither of these injured has named the applicant as an assailant and had contended that in all, six persons are involved in present crime out of which five are already released on bail by trial Court, and case of applicant is at par with that of said co-accused, however, his application came to be rejected without any sufficient reason. It is, therefore, prayed that application be allowed.

2 Learned APP, at the outset submitted that the role attributed to applicant cannot be said to be at par with other co-accused as he was driving Fortuner car involved in the present crime, while other co-accused who are released on bail, were occupants of said car, and from the contents of report and of statement of eye witnesses, it is established that applicant had given dash by his Fortuner vehicle to the motorcycles on which complainant and other injured were travelling. It is also contended that applicant has criminal antecedents and as many as six offences are registered against him and applicant while on bail in these crimes is involved in the present crime. Application is therefore opposed.

3 On perusal of report lodged by Sainath Gondhale, it appears that there was dispute between complainant and accused persons regarding *what's app* messages sent using abusive language. It is further alleged that on the day of incident at about 7/9/2016 around 2.30 pm, applicant alongwith other 10 accused chased complainant Sainath and other witnesses who were travelling on their respective motorcycles by Fortuner car bearing

Registration No. MH-04-EK-491, and gave dash to the motorcycles including that of complainant due to which his pillion rider Vinay Vishwakarma died on sustaining injuries, and accordingly on the basis of report lodged by Sainath, above crime came to be registered.

4 In the light of submissions advanced on behalf of applicant when contents of FIR are perused, it reveals that applicant along with 5 – 6 associates armed with wooden logs chased complainant and others who were on motorcycle while they were proceeding by Kalyan road and gave dash to complainant's motorcycle with whom Roshan Gondhale was travelling as a pillion rider. It is also contended that dash were also given to other motorcycles due to which all the occupants of motorcycle fell on the ground, and complainant on falling on the ground has sustained injuries on his face, right hand and right leg.

5 On perusal of statement of Roshan Gondhale which came to be recorded after a gap of almost two months on 17th November 2015, reveals that on 17th September 2015, he along with complainant Sainath and deceased Vinay Vishwakarma were together travelling on his motorcycle. In that view of the matter, I find much substance when it is contended that contents of report on this material aspect and that of statement of Roshan do not corroborate with each other. Learned APP has, however submitted that considering the nature of incident where 20 motorcyclists are involved, this contradiction does not go to the root of the case as there there is every possibility of complainant not making such statement that deceased Vinay Vishwakarma was travelling on the

same motorcycle along with him and Roshan Gondhale, said aspect can be taken due care of while evaluating the evidence at the time of trial. Similarly, having considering the fact of number of motorcycles involved along with injured, prosecution case cannot be doubted merely for the reason that the injured have given history of assault that they sustained injuries accidentally.

6 On perusal of the statements of other injured witnesses than complainant and Roshan i.e. Manoj, Mukund, Ajay all of them have implicated applicant as a driver of the Fortuner vehicle who had given dash to their motorcycle. In that view of the matter, case of applicant does not appear to be at par with that of co-accused who were merely occupant of the said vehicle.

7 Learned APP, on obtaining instructions from the Investigating Officer has relied upon police report wherefrom it reveals that applicant is a criminal element, and as many as six offences are already registered against him at Padgha Police Station, Titwala Police Station, Wadala Police Station and at Bhiwandi Police Station under various sections of the IPC in which offence, applicant is admittedly on bail. It is therefore clear that applicant while on bail is involved in the present crime.

8 Having considering the nature of offence against the applicant, it *prima facie* appears that he has played a major role in the incident in question and as such, his case cannot be at par with co-accused. In that view of the matter, there is nothing on record which entitles the applicant to be released on bail.

9 On instruction of learned APP states that charge is framed in cases in which charge sheets are filed in 2013-14. Admittedly, charge-sheet in this case is filed in the month of December 2015. Accordingly, following order is passed to meet the ends of justice.

10 Trial Court is requested to expedite the trial to be decided preferably within a period of 1(one) year from framing of charge and it is needless to mention that trial Court shall not get influenced with the observations in this order, and shall independently evaluate evidence on record.

11 Applicant is granted liberty to move this Court for bail in the event trial is not concluded as aforesaid.

12 Application is disposed of as rejected.

(PN. DESHMUKH, J)