

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2461 OF 2015

Pradeep Dnyanba Khilare	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

ALONGWITH
BAIL APPLICATION NO.2507 OF 2015

Gajanan Vitthal Kurwade	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket Nikam, Adv. for the applicant in BA No.2461 of 2015.
Mr. Sanjay Shinde, Adv. for the applicant in BA No.2507 of 2015.
Mr. Arfan Sait, APP of the State.
Mr. R.A. Pimpre, PI, Aadgaon Police Station present.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 1st February, 2016.

P.C. :

1. These are applications for bail filed by the aforesaid applicants who are facing trial in Sessions Court Case No.231 of 2015 pending before Addl. Sessions Judge, Nashik.

2. The case of the prosecution in brief is that on 27th February, 2015 in the morning hours the aforesaid applicants and the co-accused Raju Khilare with common intention committed murder of one Raju Limbaji Hingole. The said crime was registered pursuant to

the FIR lodged by Smt. Vanita Shalik Wankhede. Both these applicants were arrested on 1st March, 2015. The crime was investigated and upon completion of the investigation chargesheet was filed before the JMFC, Nashik and the case being Sessions triable was committed to the Sessions Court, Nashik. The applicants had filed applications for bail which came to be dismissed by order dated 26th June, 2015 and 29th October, 2015. Hence the present applications.

3. Mr. Nikam, the learned counsel for the applicant Pradeep Khilare has submitted that the statements of said Vanita was recorded in the hospital on the same day at about 3.40 am in which she had not disclosed the name of the applicant Pradeep. The learned counsel has further submitted that the role attributed to the applicant is that Pradeep had held the legs of the deceased while the co-accused Balu Khilare had assaulted the deceased with an iron rod. The learned counsel further submitted that the said iron rod has been recovered at the instance of the co-accused Balu. He has further submitted that the medical certificate as well as the post mortem report prima facie indicate that the deceased had not sustained grievous injuries on the vital part of the body. He, therefore, contends that there is no prima

facie material to indicate that the applicants had intention to cause death of said Raju Hingole.

4. Mr. Shinde, the learned counsel for the applicant Gajanan Kurwade has submitted that the applicant is not related either to the accused or to the main accused Balu Khilare or the first informant. He has further submitted that the said applicant had no motive to cause death of said Raju. He has submitted that no weapon has been recovered at the instance of Gajanan. The learned counsel further submitted that the applicant Gajanan has been falsely implicated and that he is entitled for bail.

5. Mr. Sait, the learned APP for the State has submitted that all the three applicants shared common intention to cause death of Raju. The learned APP has further submitted that this is evident from the fact that Raju was called from Kolhapur and thereafter taken to the scene of offence and assaulted by means of an iron rod. The learned APP further submitted that the present applicants had held the hands and legs of the deceased and had thereby allowed the co-accused to inflict injuries and cause death of said Raju. The learned APP further submitted that the statements of the eye witnesses prima

facie indicate that the applicants were involved in committing the said crime.

6. Relying upon the decision in the cases of *Nand Kishore Vs. The State of Madhya Pradesh, (2011) 12 Supreme Court Cases 120* and *Suresh & Anr. Vs. The State of U.P., (2001) 3 Supreme Court Cases 673*, the learned APP submits that the material on record prima facie proves that the applicants had shared common intention of causing death of said Raju. Relying upon the case of *Bakhtawar & Anr. Vs. The State of Haryana, 1979 Cri. L.J., 883*, the learned APP has further submitted that for commission of offence of murder it is not necessary that the accused should have the intention to cause death, there is material to prove that the accused had inflicted injuries actually suffered by the victim and such injuries are found to be sufficient in the ordinary course of nature to cause death.

7. The learned APP further submits that in the present case the applicant had expired as a result of the injuries inflicted by the co-accused. The applicants by their overt act had allowed the co-accused to inflict the said injuries and said Raju had expired due to hypovalomic shock due to trauma on the body. He therefore contends

that the applicants are involved in commission of offence under Section 302 r/w. 34 of the IPC. The learned APP further submits that the offence is of serious nature. Furthermore the applicants as well as the other co-accused are the employees of Nav Jeevan Primary School and in the facts and circumstances of the case it would not be in the interest of justice to grant bail to the applicants.

8. I have perused the records and considered the submissions advanced by the learned counsels for the respective applicants and the learned APP for the State. The FIR lodged by Vaneeta prima facie reveals that she is a married lady having two children of 7 and 4 years of age. The FIR further reveals that since about one year prior to the incident she had developed friendly relations with deceased Raju and that she was having extra marital relations with the said Raju. The complaint further reveals that thereafter she came in contact with co-accused Balu Khilare with whom she had physical relations.

9. The complainant Vaneeta has alleged that on 25th February, 2015 the co-accused Balu had called her and the deceased Raju to Nashik. Accordingly she along with Raju proceeded to Nashik. They both reached Nashik on 27th February, 2015 at about 6

am. The co-accused Balu received them at the railway station and took them to his residence. The FIR reveals that the applicant Pradeep the cousin of Balu was also present at the house of Balu Khillare. At about 7.30 pm said Raju, Balu and Pradeep went for a stroll and about one and half hours later one person came to the house and told the wife of Balu that her husband i.e. Balu Khilare had assaulted their guest. The complainant has stated that as they were proceeding to the scene of offence, she met Balu Khilare and said Balu Khilare told him that he along with Pradeep and Gajanan had assaulted Raju Hingole. The complainant further stated that when she reached the place of incident she saw Raju fallen on the ground. He had sustained injuries and that Raju had told her that he was assaulted by Balu Khilare and his cousin Pradeep and their associate with an iron rod. She has stated that said Raju was taken to the hospital and that he expired on the same date.

10 It is to be noted that the statement of the complainant which was recorded in the hospital does not prima facie indicate that the deceased had told her that he was assaulted by Pradeep. The said statement does not prima facie disclose the names of the applicants Pradeep and Gajanan. None the less the statements of two eye

witnesses prima facie reveal that both these applicants were present at the place of incident. These two witnesses have stated that the applicants Gajanan and Pradeep had held the hand and the legs of deceased while the co-accused Balu was inflicting injuries by the iron rod on the deceased. The material on record therefore prima facie proves that the applicants were present at the place of incident and had in fact held the hands and legs of the deceased while he was assaulted by co-accused Balu.

11. In the case of *Nand Kishore (Supra)* the Apex Court has held that the application of Section 34 of the IPC depends upon facts and circumstances of the given case. It was held that “under Section 34 of the IPC every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and therefore, in both these respects the individual role is put into serious jeopardy although this individual role is part of a common scheme in which others have also joined him and played a role that is similar or different”. It was further held that “if the common intention leads to the commission of criminal the offence charged, each one of the

persons sharing the common intention is constructively liable for the criminal act done by one of them". The Apex Court has held common intention or state of mind and the physical act, both may be arrived at the spot and essentially may not be result of any predetermined plan to commit such an offence.

12. In the case of *Suresh Babu (Supra)* the Apex Court has held that the participation in the crime in furtherance of common intention is a sine qua non for Section 34 of the IPC.

13. Reverting to the facts of the present case as stated earlier the records prima facie reveal that the applicants were present at the place of incident and had committed an overt act by holding the hands and legs of the deceased Raju. The question however is whether the applicants had shared intention of causing the death of Raju. The contention of the learned APP that co-accused Balu Khillare had specifically called the deceased to Nashik cannot prima facie be considered in view of the statement made by the complainant under Section 161 of the Cr.P.C. wherein she had alleged that she was proceeding to Aurangabad but by mistake she got down to Nashik station. Said statement prima facie appears to be inconsistent with

the statement recorded under Section 164 of the Cr.P.C.

14. The FIR lodged by complainant as well as her statement recorded in the hospital further indicates that the deceased, co-accused Balu and Pradeep had left the house at about 7.30 pm. The material on record does not prima facie indicate that the applicants herein were armed with weapons or that they had taken said Raju out of the house with an intention of causing his death.

15. It is to be noted that the injury certificate and post mortem report prima facie reveals that the injured had broken upper tooth, lacerated wound on the back at right side, lacerated wound on right maxillary region, contusion on the left forearm, contusion on the right arm and right side fore head and haematoma on abdomen. The PM report further indicates that there was no fracture on the skull. It further reveals that the cause of death was due to hypovolemic shock due to trauma on the body. The PM report does not prima facie indicate that the deceased had sustained any grievous injury on any vital part of the body. Hence prima facie no intention or knowledge can be attributed to these applicants.

16. Considering the nature of the allegations levelled against the applicants and also considering the fact that they are in custody since 28th February, 2015 and 1st March, 2015 respectively and that the investigation is already completed and the charge is already filed, in my considered view, the applicants are not required to be detained in custody. The applicants are otherwise permanent residents of Nashik and there is no possibility of the applicants absconding. The applicants do not have criminal antecedents. The applicants are therefore entitled for bail.

17. Hence the applications are allowed on the following terms and conditions.

- (i) The applicants shall be released on bail on furnishing P.R. bond of Rs.40,000/- (Rupees Forty Thousand only) each with one local sureties in the like amount to the satisfaction of the Addl. Sessions Judge, Nashik.
- (ii) The applicants shall furnish their contact number permanent and temporary address, if any, to the investigating officer.
- (iii) The investigating officer shall verify the

said addresses and the contact numbers before the applicants are released on bail.

(iv) The applicants to report to the investigating officer on every first Monday of the month, for a period of three months.

(ANUJA PRABHUDESSAI, J.)