

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.72 OF 2015

Ramesh @ Digya @ Digambar

Ganpat Bhosale and Anr.

.. Applicants.

Vs.

The State of Maharashtra

.. Respondent.

Mr.Abhijit Kadam for the Applicants.

Ms. Pallavi Dabholkar APP for the Respondent.

CORAM : A. K. MENON, J.

DATED : 15TH JUNE, 2017

P.C. :

1. Called for hearing. By consent taken up for final disposal.
2. By this revision application the applicants have called in question the order dated 21st August, 2013 whereby the application for discharge preferred by the present applicants on 1st June, 2012 was rejected. The application for discharge proceeds on the basis that unknown persons have entered the house of the victims in question and the occupants were attacked with iron rods. The assailants also did away with cash, jewellery and valuables after which crime bearing No.268 of 2011 under Sections 396, 397 and 452 of Indian Penal Code was registered and the investigation commenced.

3. It is the case of the applicants that after the incident which took place on the night of 27th May, 2011 a separate incident occurred on 2nd June, 2011 where two persons were found in a neighbouring village behaving suspiciously. They came to be confronted and assaulted by the villagers as a result one of them died and the other was seriously injured. One of these persons Vilas Bhosale was involved in the offences complained of on 27th May, 2011. After obtaining names of other persons involved in the offence on 27th May, 2011 from Mr.Bhosale in crime bearing No.268 of 2011 was registered. The Sessions Court granted bail to the second applicant and thereafter first applicant obtained bail from this Court vide order dated 13th December, 2011. According to the applicants there is no offence committed by the accused and there is nothing in the charge-sheet that would connect the accused with the present case. In the circumstances it was submitted that the accused may be discharged.

4. While considering the application, the Sessions Court observed after narrating the incident that one of the contention taken up by the applicant was failure to conduct an identification parade and hence this aspect is sought to be addressed as being in support of the applicants. The impugned order further records a submission on behalf of the State particularly on aspect of the statement of eye witnesses, Swapnali, who was present at the time of incident. The Sessions Court observed that the incident was narrated by the said witness, who claims to be an eye witness and the information said to have

been provided by the accused in respect of spot panchnama and other circumstantial evidence was sufficient to reject the application for discharge.

5. Vide order dated 15th February, 2017 this Court had directed the investigation officer to file an affidavit mentioning all the evidence against revision petitioner. Accordingly, the affidavit of one Ramesh Balaram Ghadavle who was the Investigating Officer at the material time has been filed. In the said affidavit, the particulars of incident have been reiterated as appearing from the record. Today, learned counsel appearing on behalf of the applicants submitted that there is no evidence whatsoever against the present applicants and that the applicants were arrested only on the basis of suspicion and that to from Osmanabad whereas incident took place at Panvel.

6. He further submitted that entire case of the prosecution is founded on two aspects firstly, confession made to the police wherein the applicants stated to have pointed out the house and spot at which incident took place and secondly, a statement by daughter of Balaram Phulore, namely, Swapnali, who has stated that accused persons can be identified by her since she was an eye witness to the incident. According to the learned counsel for the applicants, the said statement is being made without any particulars which could help identify the present accused as persons who were involved in the offence. It is submitted that the statement is bereft of particulars and it is not possible to identify the accused on the basis of statement made by Swapnali.

He further submitted that a total of eight persons are stated to have entered house of Balaram on night of 27th May, 2011 as a result of which the mother and brother of said Swapnali died. Counsel for the applicant submitted that five culprits are absconding. Apart from the applicant the said Vilas Bhosale no other persons are traced. He further submitted that even stolen valuables and cash was not recovered. In the circumstances he submits that the impugned order is bad in law and requires to be set aside. He submitted that the statement of Swapnali does not inspire confidence inasmuch as she is believed to have seen accused at night indoors and in the of a wake night lamp which was on in house at the time of incident.

7. On behalf of the prosecution learned APP pointed out that the statement made by Swapnali is to the effect that eight persons entered the house after family had retired for the night. She has narrated the fact that a wedding ceremony which was taking place in vicinity which her mother offended. When her mother returned from the function at about 11.30 pm she had opened the door for her mother. After the mother returned home she closed the door and belted it from inside and thereafter retired for the night after switching off the TV.. When all the members of family were asleep she heard sound from the kitchen area. She was awakened by the sound and she also realised that her mother and her brother were also in the process of waking up being alerted by said sound. The statement further records that she saw one unknown person entering the room from kitchen area since the

door of the kitchen had been left open, at that point she proceeded to open door of hall and instantly one more person emerged from the kitchen. He allegedly held the said Swapnali while two other persons suddenly appeared in the hall also found their way to hall. The following scuffle led to injury as a result of which her mother and brother fell on the floor and she was also struck by assailant. She has further stated that she will be able to identify said persons and has given description of those persons in the statement. In the circumstances it is submitted that there is sufficient evidence to establish that accused persons were involved in the commission of offence and that Swapnali has clearly stated that she would be able to identify those persons. In the circumstances it is submitted that taking overall view it was not possible to contend that there is no case whatsoever against accused persons.

8. I have heard counsel at length and having perused the impugned order dated 8th July, 2007 and the statement recorded. Swapnali has clearly stated and in no certain terms, that there is possibility of said Swapnali identifying accused during the trial. Although learned counsel for the applicants has stated that the accused persons were unconnected with the offence and have relied upon fact that the incident had taken place on 27th May 2011 and the accused were arrested from Osmanabad merely on the basis of suspicion and information gathered from Vilas Bhosale. I do not find much substance in the submission. Moreover, it is stated that Swapnali's statement is dated 8th July, 2014 and fact that identification parade was not

held at the material time will not come to the assistance of the applicants. Learned counsel for the applicants relied upon a judgment in 2004 (3) SCC 106 in *Dastagir Sab and Anr vs. State of Karnataka* records that failure to hold identification parade will not be fatal to prosecution inasmuch as a person claiming to be eye witness and in the present case Swapnali states that she had actually seen the accused in her home on the night of the incident and will be able to identify them the trial must proceed. In the circumstances I am not persuaded by the submissions made on behalf of the applicants that there is no reason for refusing the application for discharge. In my view prima facie there is sufficient ground for proceeding with trial and I am unable to find any reason to discharge accused in the facts of this case.

9. In the circumstance I pass the following order :

- (i) Revision application is dismissed.
- (ii) No order as to the costs.
- (iii) At this stage learned counsel for the applicants seeks continuation of the ad-interim relief for some time. I find that the ad-interim relief in terms of prayer clause (c) has been in force since 10th August, 2015. In the circumstances ad-interim stay shall continue for a period of six weeks.

(A.K. MENON, J.)