

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2516 OF 2016

Durgesh Vilas Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. A. P. Mundargi senior counsel i/b Mr. Ayaz Khan Advocate for Applicant.
Ms. Asmita Misle h/f Mr. Nilesh Ojha for Intervener
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 5th JANUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 20/07/2016 in crime no. 266 of 2016 registered at Nerul Police Station. Investigation is completed and charge-sheet is filed against the accused and 10 others for offence punishable under sections of the Indian Penal Code and sections 3 (1) (R) (S), 3 (2) (V) (V A) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The case is committed to the Court of Sessions and registered as Sessions Case No. 391 of 2016. Present applicant happens to be original

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accused no. 5.

2) It is the case of the prosecution that original accused no. 11 in the present case was acquainted with one Swapnil Sonavane. They both belonged to different caste/community. It is clear from the records that the parents of original accused no. 11 did not like the friendship between original accused no. 11 and Swapnil.

3) On 20/07/2016, Shahaji Sonavane, father of Swapnil lodged the report at the police station alleging therein that on 18/07/2016, some 4-5 boys had come to his house and had taken Swapnil along with them. It is alleged that Swapnil was assaulted by the said boys, he was taken to the police station, his statement was recorded. P.S.I. Rajguru had questioned the boys. There, Swapnil was made to admit that he would not contact accused no. 11. He informed about the same to his father.

4) On 19/07/2016, the first informant had been to the police station to report about the incident 18/07/2016. His report was not accepted by the police. He was not permitted to meet any police officer. That at about 7.30 when the first informant was at the police station, he received a phone call from his daughter informing him that 15-20 boys had gone to their house

under the influence of alcohol and were kicking the door of their house to open it forcibly. The first informant had to rush home. There, he saw Sagar Naik who is original accused no. 1 and brother of accused no. 11 and his maternal cousin Durgesh i.e. present applicant along with 15-20 boys. Said boys had taken first informant and his family members to the terrace of their house. They had abused the first informant and his family members by referring to their caste and status in the society. Thereafter, first informant along with Swapnil and his wife had been to the house of accused no. 1 at Darave which is a small hamlet. There, Swapnil was being coerced to delete the images and messages between accused no. 11 and himself. Swapnil was assaulted by accused no. 1 and his father. Thereafter, they were threatened, abused and there was an attempt to assault the mother of Swapnil. That Sagar Naik and other four boys had assaulted the first informant. Swapnil was taken to D.Y. Patil Hospital where he was declared dead. On the basis of the said report, crime no. 266 of 2016 was registered at Nerul Police Station.

5) On 21/07/2016, supplementary statement of the first informant was recorded in which he had given further details narrating the incident dated 18/07/2016 and 19/07/2016. It is clear that young boy and girl were asked as

to whether they were in love. Swapnil was made to give a written apology. The sim card was damaged by the accused persons. The first informant has narrated the insensitivity of P.S.I. Rajguru Madam. Swapnil had admitted before his parents that he was in love with accused no. 11 and she had sent her own images on his cellphone. He had also disclosed that the girl had threatened him that in the event that he refused to marry, she would commit suicide. According to him, when they were going to the police station to lodge the report, deceased had disclosed to his father that Sagar had in fact assaulted him and had also given bribe to the police officers.

6) It is contended in the supplementary statement that on 19/07/2016, parents had dropped Swapnil to the college. In the evening, Swapnil had informed his father that he is safe. The first informant had again approached the police station to lodge a report. He was not allowed to meet the officers. It is further alleged that thereafter, when they had reached to their own house, they saw the same boys standing at the gate. Sagar Naik had approached the first informant and had asked him to get indoors with him. The first informant went to his house. He was followed by the boys. They had informed the first informant that the images of accused no. 11 are found in the cellphone of their

son Swapnil. They insisted upon them to tender apology. Sagar and his brother had brandished weapons. Thereafter, they were all taken to the house of Sagar where the deceased Swapnil and his parents were humiliated, abused and thereafter Swapnil was made to bow to the parents as well as accused no. 11 and he was forced to refer to her as sister. At that stage, young boy and girl were once again questioned as to whether they were in love with each other. The girl was scared of her brother, father and other relatives and therefore, had denied any intimacy with Swapnil. Mother of Swapnil had questioned her young son wherein he had admitted that he was in love with accused no. 11. It is stated that all the accused persons had assaulted Swapnil with fist and kick blows and accused no. 1 Sagar had assaulted Swapnil on his head with a fighter. The cause of death is head injury. There were abrasions and contusions all over the body of the deceased. There is an allegation that Swapnil was kicked on his private parts, however, there is no injury found in the post mortem notes.

7) The learned senior counsel for the applicant submits that in fact, the act was committed by Sagar Naik and his brother and father, however, only because the applicant was in the company of Sagar Naik, he has been

arraigned as an accused. According to the learned counsel the common object of the unlawful assembly was only to teach a lesson to Swapnil and ask him to tender apology to the parents and therefore, according to the learned counsel, applicant deserves to be enlarged on bail as there is no overt act attributed to the present applicant.

8) Papers of investigation would indicate that at the first instance i.e. on 18/05/2016, applicant herein was in the company of Sagar. The learned APP has demonstrated that the applicant had played an active role by calling upon the other accused persons to form an unlawful assembly. There are call detail records to that effect. It appears from the record that the applicant and other accused had formed an unlawful assembly and the common object of eliminating Swapnil had developed on the spur of the moment only after Swapnil had candidly admitted that he was in love with accused no. 11. It is unfortunate incident wherein police have shown zero sensitivity. In fact, the whole episode could have been saved by the police and they could have saved the life of Swapnil, had they taken right steps in the right direction at the appropriate time, but the police officers were busy posing as Bollywood cops and referring to movies in which there were cases of elopement of young boys

and girls.

9) This is a classic case of honour killing. All the accused would be equally liable for the unfortunate death of 15 years old boy. It is more unfortunate that the victim girl has also been arraigned as an accused. Police have blown the incident out of proportion by arraigning the young girl as an accused only for public satisfaction. The erring officers were suspended only to give a signal that the erring officers can be punished by the Department, however, soon thereafter, their suspension has been revoked.

10) Honor killing is a reflection of a Barbaric Society. The civilised society cannot and should not tolerate such brutalities where an young boy is killed only because he is in love. It would be necessary to sensitize the police department on such issues and the police need to be reminded every day and in every manner that they are public servants and it is incumbent upon them to protect the society and not join hands with anti-social elements.

11) As far as the role of the present applicant is concerned, it is apparent on the face of the record that he had actively participated in hatching the plot for assaulting and eliminating Swapnil and had succeeded in the same. The applicant does not deserve any leniency from this Court.

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12) Be that as it may, the case is committed to the Court of Sessions and it will take its own course.

13) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)