

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.722 OF 2017

(Sushant S/o Prabhakar Pachare and others..vs..The State of Maharashtra, through
PSO.PS.Bhadrawati,District-Chandrapur.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri R.M.Daga, Advocate for applicants.
Shri M.J.Khan, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 18, 2017

The present application is filed by original accused nos.18,26,15,17,4,6,28. These applicants are arrested in connection with crime registered with P.S.Bhadrawati, District-Chandrapur in Crime No.389/2017 for the offence punishable under Sections 143,147,148,149,302,307,323,324 of the Indian Penal Code and Section 135 of Bombay Police Act.

I heard learned advocate for the applicants and learned A.P.P. for State.

The date of incident is 01/4/2017. It is not disputed by learned A.P.P. that on the very same day a counter F.I.R. was registered against the complainant party and the said F.I.R. Crime No.390/2017 for the offence punishable under Sections 323,324 and 149 of the Indian Penal Code. The occurrences of both these offences are one and the same.

It is also not disputed that there exists one “Vijasan” lake. The complainant party in FIR in which the present applicants are shown as accused is having right of fishing whereas the accused persons are having right to cultivate product known as “Shingada”. There exists dispute between two groups and it is reported that one of the subject matter is pending before the Hon'ble Apex Court in respect of their respective rights.

According to prosecution, on 01/04/2017 the present applicants who were the members of an unlawful assembly assaulted complainant party. In that, one Jagdish Mandhare lost his life whereas one Mangesh Bandu Kamatwar and Bandu Govinda Kamatwar were seriously injured.

Investigating officer has already completed his entire investigation and the chargesheet is filed. Initially, the offence was registered for the offence punishable under Section 307 of the Indian Penal Code and on the death of Jagdish Mandhare at about 2.30 p.m. on the very same day, it was converted from Section 307 of the Indian Penal Code to Section 302 of the Indian Penal code.

There are at least ten eye witnesses to the incident. Incidentally, these eye witnesses and the deceased are also one of the accused persons in Crime No.390/2017 which was filed by Pravin Mandhare, one of the accused in the present crime.

With the assistance of learned A.P.P. I have gone through the police statements of the injured Mangesh Bandu Kamatwar and Bandu Govinda Kamatwar. Those are recorded on 24/2/2017. At this stage, the Court is not attaching much importance for the belated statements since during the course

of trial these persons have every right to explain the delay. The statements of Mangesh and Bandu show that there was gathering from both the sides and there a scuffle ensued. The specific role of assault by means of axe is attributed by all the eye witnesses against one Ganesh Pachare who is not applicant in this application. The role attributed against the present applicant is that they assaulted the injured and others by way of sticks in their hands. The prosecution has also filed the injury certificates of Raju Shravan Mandre, Bandu Vaghuji Mandhre, Dinesh Shankar Kamatwar, Bandu Govinda Kamatwar, Swapnil Raju Mandare and Mangesh Bandu Kamatwar. These certificates show that the injuries are not serious one. The learned A.P.P. submitted that the role of assault on deceased is not attributed to the present applicants.

The principle objection of learned A.P.P. for releasing the present applicants on bail is that there is an apprehension in the mind of the investigating officer that if they are released on bail there is possibility of committing of further offence. In order to buttress said submission learned A.P.P. invited my attention to the N.C. report recorded by investigating officer on 14/5/2017 when the women accused persons were released on bail by the learned Court below.

Except that N.C. report nothing is filed on record to show that the present applicants were having any criminal antecedents to show that they are prone to commit an offence. Further, learned A.P.P. has stated that though N.C. reports were recorded against the released women accused the prosecution has not filed any application for cancellation of their bail. Thus, in my view presently those N.C. reports

cannot be considered to substantiate the apprehension of the investigating officer.

The investigation is over and chargesheet is already filed. The clothes and other articles are already seized by the investigating officer. Further, looking to the role that is attributed against the present applicants and looking to the fact that these applicants have not assaulted deceased by means of any weapon in my view, their further incarceration in jail is unwarranted. That leads me to pass the following order.

ORDER

- I) The application is allowed.

- II) Applicant no.1 Sushant S/o Prabhakar Pachare, applicant no.2 Raju S/o Vasanta Mandhre, applicant no.3. Natthuji S/o Mahadeo Pachare, applicant no.4 Pramod S/o Tulshiram Kamatwar, applicant no.5 Prashant S/o Vasanta Mandhre, applicant no.6 Manik S/o Budhaji Pachare and applicant no.7 Nikhil S/o Lahuji Mandhre be released on bail on they executing P.R.Bond of Rs. 25000/- each with two solvent sureties in the like amount each in Crime No.389/2017 for the offence punishable under Sections 143,147,148,149,302, 307,323,324 of the Indian Penal Code and Section 135 of Bombay Police Act, registered with P.S.Bhadrawati,District-Chandrapur.

- III) The applicants shall attend P.S.Bhadrawati, District-Chandrapur twice in a month i.e. on 3rd Saturday and 4th Sunday in between 3.00 p.m. to 5.00 p.m.
- IV) The applicants shall not extend any threats to any of the prosecution witnesses.
- V) The applicants shall not visit the disputed site without following the directions as mentioned by the learned Civil Judge Junior Division, Bhadrawati dated 8/5/2015 in Regular Darkhast No.4/2015.
- VI) If it is noticed by the investigating officer that the applicants are causing prejudice to the prosecution case the investigating officer shall be at liberty to file appropriate application seeking cancellation of bail.
- VII) With this the application is disposed of.

JUDGE

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