

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.909 OF 2018

Anil Sadanand Patil, Age 33 years,
R/o.At Village Pogaon, Tal.Bhiwandi,
District Thane
(Presently lodged at Kalyan Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.M.S.Mohite with Mr.Raju D. Suryawanshi for applicant.
Ms.A.A.Takalkar, APP, for State.
Mr.P.G.Sarda for intervenor.
Mr.Mukesh Sagade, API, Bhiwandi Taluka Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th September 2018

PC :

1. Heard learned counsel for parties.
2. The applicant is seeking bail in CR No.I-218 of 2015 registered with Bhiwandi Taluka Police Station. The applicant is arrested on 5th September 2015 and since then he is in custody. The offences were registered under Sections 302, 307, 326, 341, 143, 147, 148, 149, 504, 506, 120B of Indian Penal Code and under Sections 4 and 27 of Arms Act.
3. The prosecution case is that the complainant's son and daughter-in-law were proceeding to consult doctor for immunization

by their car. The complainant's son tried to take out the car on the main road from his house, however, the road was blocked by the tempo of applicant. The complainant's son Vishwas told the applicant to remove the tempo and clear the way. There was a quarrel between both of them. The complainant witnessed the said incident from house. The complainant's son then returned home with the car. At that time accused Ajay Patil, Vijay Patil, Lakhan Patil, Nitesh Patil came in front of the house of complainant. There was a scuffle between them and Vishwas and Bajrang Patil. The complainant and her daughter-in-law tried to intervene in the quarrel. Accused Ajay Patil, Gurunath Patil, Tushar Gaikar, Tulshiram Patil, Sadanand Patil and others came at the place of incident. They were armed with chopper, sword, wooden logs and sickle in their hands. They assaulted the complainant's husband Krishna Patil, Manik Patil, Manohar Patil, Dilip Patil, Bajrang Patil and Vishwas Patil. Krishna Patil (husband of complainant) was beaten while he was on motorcycle and was approaching towards house. Krishna Patil died immediately after his admission to the hospital. The FIR was registered at the instance of Smt.Ranjana Patil on 4th September 2015. During the course of investigation statements of several persons were recorded and charge sheet was filed.

4. The applicant preferred application for bail before the Sessions Court, which was rejected vide order dated 25th February 2016. During the course of investigation, statements of various witnesses who were injured persons, were recorded by police. The injured were treated in the hospital which is fortified by the injury certificate.

5. Learned counsel for applicant submitted that the applicant is in custody since the date of his arrest. There are contradictions in the statements of witnesses. The applicant has been falsely implicated in this case. The role of assaulting the deceased is attributed to other accused and not to the applicant. The applicant had been attributed minor role of assaulting the witness Manik Patil. The statement of complainant is silent with regards to the role of applicant. The injured Manik Patil has not specified by which weapon and on which part of his body the blow was given by the applicant. The medical evidence and the statements of witnesses do not match. There is no recovery of weapon from the applicant. It is further submitted that there are material contradictions amongst eye witnesses about the incident prior to actual assault. The case of applicant is on par with accused Tushar Gaikar who has been granted bail by this Court and the applicant is entitled for bail on the ground of parity. It is further submitted that the statements of witnesses are stereo type. All of them are interested witnesses and they tried to implicate the applicant and other accused in the crime. It is further submitted that the injured Manik Patil is out of danger and applicant has not been attributed with specific overt act of assaulting Krishna Patil. It is further submitted that some of the co-accused namely Sharad Patil was granted anticipatory bail by this Court. Learned counsel also pointed out the order granting bail to Nitin Shelke passed by this Court in Bail Application No.1188 of 2018. It is submitted that further detention of the applicant is not necessary and he cannot be kept in prolonged custody.

6. Learned APP submitted that there is strong evidence against applicant. The involvement of the applicant is reflected in the statements of witnesses recorded during the course of investigation.

Specific overt act has been attributed to the applicant. He was armed with deadly weapon like chopper. All the accused were armed with dangerous weapons and they had jointly assaulted the deceased Krishna Patil as well as Manik Patil and others. The witnesses have categorically stated that the applicant was armed with a weapon and he has assaulted the injured person. It is further stated that the case of co-accused who are granted bail or anticipatory bail, stand on a different footing and the applicant is not entitled for parity. It is further submitted that trial has already commenced, charge has been framed against the accused on 1st August 2018 and witness summonses are already issued to the applicant and other witnesses. It is further submitted that one more case is pending against the applicant being CR No.I-80 of 2010 registered with Bhiwandi Taluka Police Station under Sections 143, 147, 148, 149, 326, 504, 506 of Indian Penal Code. Learned APP points out the statements of eye witnesses including some of the injured persons to support her submission that the applicant has played vital role in the incident.

7. Learned advocate for the intervenor reiterated the submissions advanced by learned APP and supported the same. In addition to that he relied upon order dated 24th October 2016 passed by this Court in Criminal Bail Application No.1954 of 2016 wherein the application for bail was rejected by this Court.

8. Having heard both sides, I have also scrutinized the documents on record in the form of charge sheet. During the course of investigation, police have recorded statements of several eye witnesses. The alleged quarrel had ensued on account of blocking

road by applicant. The quarrel was followed by assault. The investigation papers and the charge sheet reveal that the accused were called at the place of incident and all of them were armed with dangerous weapons. The first informant in statement dated 4th September 2015 had stated that the accused were armed with weapons like choppers, wooden logs, iron rod, scythe and they had assaulted the husband of complainant and others. The primary role of assaulting the deceased was indeed attributed to Ajay Patil who gave blow by chopper on the chest of Krishna Patil. Vijay Patil assaulted Manik Patil on his abdomen by chopper. Witness Manohar Patil tried to rescue him. Hence he was assaulted by Ajay Patil by chopper. Lakhan Patil was assaulted by wooden log and Nitesh as well as Dilip were assaulted by scythe. Similarly, Gurunath assaulted Bajrang Patil by sword and Tushar Gaikar used sword for assaulting the injured. First informant further stated that the applicant was armed with chopper. Tulshiram was armed with sword and others were armed with weapons of scythe and wooden logs. Krishna Patil and Manik Patil sustained serious injuries. They were taken to hospital. The injury certificates of the injured are on record. The medical report indicates the injuries sustained by Krishna Patil. I have also perused the statement of Dilip Patil which was recorded on 8th September 2013. He has stated that the applicant had assaulted Manik Patil by chopper. He is also attributed the role of assaulting to other persons. He has stated that all the accused were armed with dangerous weapons and they have assaulted Krishna Patil, Manohar Patil and Bajranj Patil as well as Vishwas Patil. He has also stated that applicant was instigating others that they should kill the opponents which was followed by assault. The statement of Manohar Patil also refers to instigation of applicant and assault by

the applicant on Manik Patil by use of chopper. The statement of Manik Patil also refers to the assault by applicant. Learned counsel for applicant, however, submitted that the witness has not mentioned as to by what weapon and on which part of body the applicant had assaulted him. It is also submitted that the statement of the said witness was recorded on 15th September 2015 and there is no recovery of weapon at the instance of applicant. However, on perusal of his statement it is apparent that the said witness has mentioned about the nature of weapon which was in possession of applicant although he has not specified that as to on which part of the body the applicant had assaulted. It is pertinent to note that the assault by the applicant on Manik Patil is also fortified by the statements of other witnesses and it is the consistent version of the witnesses that applicant was holding chopper in his hand and that he had assaulted Manik Patil. The statement of Vishwas recorded on 5th September 2015 also corroborates the version of other witnesses. He has also referred to the fact that applicant was carrying weapon in his hand and he was instigating others and has also assaulted Manik Ppatil by chopper. The statement of Bajrang also refers to the assault and attributes overt act of assaulting Manik Patil. I have also perused the order granting anticipatory bail passed by this Court in ABA No.1726 of 2015. This Court had allowed the said application in favour of Sharad Bala Patil and others. The said relief was granted considering the role attributed to the said accused. The overt act attributed to the applicant can be distinguished from the said persons. It is also apparent that the accused Tushar Gaikar was granted bail by this Court after rejection of his earlier application on the ground that accused who were similarly placed, were granted anticipatory bail by this Court vide order dated 19th June 2018. It is

also pertinent to note that co-accused Gurunath Mhatre had preferred an application for bail before this Court, which was rejected vide order dated 24th October 2016 considering role attributed to him. In the said order it is observed that the accused was instrumental in instigating other accused in assaulting Krishna Patil and other injured persons and there is material in the form of statements of witnesses on record, which indicate that he had assaulted Bajrang Patil who had suffered injury. The Court further observed that role attributed to the said accused is not only of assault to Bajrang with sword but also in instigating other accused in committing assault. As far as present applicant is concerned, it is noted earlier that he was attributed the role of instigating other accused. The entire incident had occurred due to quarrel ensued between Vishwas and present applicant and thereafter other accused were called, who came at the spot armed with dangerous weapons. It is also noted that the charge is already framed and the witness summonses have also been issued by the Trial Court. There is consistency in the role attributed to the applicant by the witnesses. The statements of injured witnesses were recorded subsequently obviously on account of the fact that they were being treated for the injuries.

9. In the circumstances no case for bail is made out. Criminal Bail Application No.909 of 2018 is rejected.

(PRAKASH D. NAIK, J.)

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