

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

CRIMINAL BAIL APPLICATION NO. 1117 OF 2018

Sujit @ Pappya Kisan Dhole

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Nilesh Pandey, Advocate a/w. Sameer Vispute i/by Equa Juris for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent - State.

(Mr. Chaudhary P. , PSI, Padagha Police Station, is present.)

CORAM : PRAKASH D. NAIK, J.

DATE : OCTOBER 09, 2018.

PC :

1 This is an application for grant of bail in connection with C.R. No. 145 of 2015 registered with Padgha Police Station for offences punishable under sections 302, 307, 147, 148, 149 of the Indian Penal Code and under sections 4, 25 of Arms Act. The applicant was arrested on 08.09.2015.

2 The prosecution case is that there was a dispute with regards to the whatsapp messages using abusive language against one community. It is alleged that on 07.09.2015, the first informant alongwith one of his friend - Roshan Gondhale

- came near Agrawal College, where they noticed several other persons gathered there. On inquiry, it was learnt that leader of one group viz. Deva had forwarded a whatsapp message and abused the Aagri Community, due to which several persons from the said community had gathered with a view to meet the members of Deva Group and come to an understanding with them. All such persons started moving towards Padgha on Bapgaon – Padgha road on their motorcycles. The applicant-accused came in a Fortuner car and got out of the car with wooden sticks. Apprehending threat, the persons from Aagri Community turned back towards Kalyan. The accused sat back in the said car and chased the persons of Aagri community and dashed into the first informant's bike which he was riding alongwith his friend Roshan Gondhale. The accused also dashed into other motorcycles, causing riders to fall. The first informant and his friend had been injured. Vinay Vishvakarma was also dashed by the car of the applicant-accused, who succumbed to injuries. During the course of investigation the applicant-accused and others were arrested on 08.09.2015.

3 The applicant preferred an application for bail before the Court of Sessions, which was rejected by order dated 22.02.2016. Subsequently, the applicant preferred application for bail before this court, which was also rejected by the co-ordinate bench of this court (Coram : P. N.

Deshmukh, J) on 22.06.2016 with liberty to move this court for bail in the event trial is not concluded within the stipulated period. The trial court was requested to expedite the trial, preferably within a period of one year from framing of charge. The applicant had thereafter preferred another application for bail, being bail application no. 2089 of 2016, which was withdrawn with liberty to file fresh application, if found necessary, in compliance of directions given by this court in its order dated 22.06.2016. The earlier orders were passed by the Co-ordinate Bench of this court (Coram : P. N. Deshmukh, J.). However, since this Hon'ble Judge is not available at the principle seat, the matter is placed before this court.

4 Learned counsel for the Applicant submitted that there are several discrepancies in the evidence. The applicant was granted liberty to prefer an application for bail in the event the trial does not conclude within a period of one year of framing of charge. It is submitted that the charge has not been framed against the applicant, although the trial was expedited.

5 It is further submitted that in addition to the submission advanced earlier, the applicant would point out the circumstance which would entitle the applicant to be released on bail. It is submitted that the applicant has been

falsely implicated in this case. There was a mob of people at the spot and it is difficult to accept that the applicant -accused was driving the Fortuner Car and that he had dashed his car at the victim with a view to cause murder. The large number of boys from the Aagri community, who riding their motorcycles. No blood was detected on the Fortuner car. The circumstances do not establish that the accused were involved in the commission of crime. There was no damage to the car to support the prosecution case that the car had dashed against the motorcycle which was driven by the victim. It is also submitted that the history given to the hospital during medical examination is about the road traffic accident and thus the prosecution case, that the victims were dashed by the accused was concocted. It is further submitted that the cross FIR lodged against the opponents was not brought to the notice of this court while considering the earlier application for bail. The applicant cannot be subjected to prolonged custody without trial. Despite direction of this court, charge has not been framed. It is further submitted that the applicant was not aware of the alleged rivalry between the two groups or that the deceased belongs to the Aagri Community. Taking the prosecution case as it is, the offence under section 302 is not made out. The medical officer, after the postmortem, has indicated that the injuries sustained by the deceased were as a result of the hard / blunt

object, which is contrary to the statement of the first informant.

6 Learned APP submitted that the earlier application preferred by the applicant before this court was rejected on merits and the said order cannot be reviewed. The court while rejecting the application has considered the evidence on record. Therefore, said evidence cannot be evaluated again in this application. It is submitted on instructions that the trial could not be proceeded, as the accused, who were on bail, are not remaining present before the court. It is submitted that statements of the witnesses categorically refer to the presence of the applicant at the scene of offence and the role of committing the crime has been specifically attributed to him. It is further submitted that the role attributed to the applicant cannot be on par with the other accused, as the Fortuner Car, involved in the crime, was driven by the applicant-accused. From the contents of the first information report and the statements of witnesses, it is established that the applicant had given dash of Fortuner Car to the motorcycles on which the complainant and other injured were traveling and there are criminal antecedents against the applicant as six offences are registered against the applicant. The learned Advocate for the applicant, however, submitted that the applicant has been acquitted in all the cases which

is fortified by the judgments and orders passed by the respective courts.

7 I have gone through the documents on record. I have perused the first information report dated 07.09.2017 lodged by Sainath Ravindra Gondhale and the statements of witnesses - Shatrughun Dalvi and other persons. The statements of these witnesses establish the presence of the applicant at the scene of the offence, as the person who was armed with wooden log so also driving the Fortuner car and gave dash to the motorcycles. While considering the earlier application for bail, this court has taken into consideration entire evidence on record. It was observed that the contents of the FIR indicate that 5 to 6 associates armed with wooden log had chased the complainant and others who were on motorcycles and thereafter gave dash to the complainant's motorcycle with whom Rosham was a pillion rider. Dash was given to the other motorcycles due to which the occupants of the motorcycles fell on the ground and sustained injuries. Therefore, the observations indicate that the court has considered the nature of offence against the applicant and observed that, prima facie, it appears that the applicant -accused had played an important role in the incident in question.

8 This court while rejecting the application for bail, by order dated 22.06.2016 had, however, expedited the trial to be decided preferably within a period of one year from the framing of the charge and the applicant was granted liberty to move the court for bail in the event the trial is not concluded. Despite that the trial court has not proceeded with the trial.

9 Learned APP has submitted that the accused who are on bail are not attending the proceedings. However, the trial court is at liberty to take appropriate steps against the accused, who were not attending the court while on bail. The present Applicant is in custody and it is expected that he would be produced before the court on the date of the hearing. Surprisingly, even the charge has not been framed although this court and expedited the trial by order dated 22.06.2016.

10 In the circumstances, it is expected that the trial court shall take all necessary steps, as provided by law and would proceed with trial as early as possible and conclude the same expeditiously. It is expected that the trial court would conclude the trial within six months from today.

11 Having considered the nature of the offence, the submission advanced by both the sides and observations made by this court while rejecting the application for bail, it is not

possible to take a different view of the matter, although liberty was granted to prefer fresh application.

12 Bail application is rejected.

(PRAKASH D. NAIK, J.)

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