

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1778 OF 2018

VENKATESH NANASAHEB MORE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr. Shirish Gupte, Senior Counsel i/b. Mr. Himanshu Kode,
Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 27th SEPTEMBER 2018

P.C. :

1 This is second bail application of applicant Venkatesh
Nanasaheb More who is an accused in Crime No.296 of 2016
registered with Police Station Panchvati, Nashik, for offences
punishable under Sections 302, 307, 323, 149, 144, 147, 148,
120B, 109, 212 read with 34 of the Indian Penal Code as well as
under Section 135 of the Maharashtra Police Act and under
Section 7 of the Criminal Law Amendment Act. This application is

registered at the instance of injured First Informant Mandabai Wagh – mother of deceased Sunil Wagh and injured witness Hemant Wagh.

2 Heard the learned senior counsel appearing for the applicant/accused. By pointing out the order passed by this court on 8th March 2018 in Criminal Bail Application No.2923 of 2017 filed by present applicant Venkatesh Nanasaheb More, the learned senior counsel argued that after rejection of this bail application on 8th March 2018, several co-accused having similar roles have preferred bail applications before this court and all those bail applications are allowed by this court. The learned senior counsel placed reliance on order dated 16th April 2018 passed by in Bail Application No.187 of 2018 preferred by Kiran Nagare, order dated 30th July 2018 passed in Bail Application No.1260 of 2018 preferred by co-accused Akash Jadhav, order dated 5th September 2018 passed in Bail Application No.1723 of 2018 filed by Rakesh Koshti, order dated 7th September 2018 passed in Bail Application No.1772 of 2018 filed by Shrinivas Kanade and order dated 11th

September 2018 in Bail Application No. Exhibit 93 in Sessions Case No.68 of 2017 passed by the Sessions court releasing co-accused Mayur Bhavsar. With the aid of these orders, the learned senior counsel argued that subsequent to rejection of first bail application of the present applicant, other accused persons are released on bail and affidavit of the State shows that those co-accused are having similar role. Hence, on the principle of parity, the present applicant/accused is also entitled for same treatment.

3 The learned senior counsel drew my attention to the statement of witnesses and argued that even if the prosecution case is accepted as it is, then also it cannot be said that the applicant/accused and the co-accused released on bail were having common object to eliminate deceased Sunil Wagh. The incident of killing him happened on the spur of moment and it was co-accused Kundan Pardeshi, who according to the prosecution case, caused death of Sunil Wagh. Hence, even on merits also, the applicant/accused is entitled for bail.

4 It is further argued that misplaced reliance by the prosecution on Crime No.313 of 2015 registered against the present applicant/accused is of no avail to the prosecution. The order releasing the applicant/accused on bail in that crime passed by the learned Additional Sessions Judge, Nashik, on 20th April 2016 makes it clear that at the relevant time the applicant/accused was not even present on the spot of the incident and his plea of alibi was found favour with the learned Additional Sessions Judge, while releasing the applicant/accused on bail in that Crime No.313 of 2015. It is further argued that Crime No.263 of 2018 which is registered against the applicant/accused makes it clear that the incident of murdering Kishor Nagare took place when the applicant/accused was in jail and weapon of offence was knife. The confession of juvenile in conflict with law in that crime cannot be read in evidence and even otherwise, the said juvenile in conflict with law has stated that the present applicant/accused had handed over koita and pistol to that juvenile in conflict with law, which are obviously not the weapons of assault.

5 With this, the learned senior counsel argued that there is no prima facie case for the offence punishable under Section 302 of the Indian Penal Code against the present applicant/accused, and therefore on the principle of parity, the applicant/accused is entitled for bail.

6 The learned APP opposed the application by contending that purpose of Section 149 of the Indian Penal Code was not considered while deciding the bail applications of other co-accused subsequent to the rejection of bail application of the present applicant/accused. The learned APP drew my attention to statement of Kishor Nagare recorded in Crime No.313 of 2015 which relates to murder of Rahul Jadhav and murderous assault on this witness. According to the learned APP, statement of this Kishor Nagare recorded in Crime No.313 of 2015 shows that there was specific threat to his life extended by the present applicant/accused during telephonic conversation which has resulted in murder of Rahul Jadhav and assault on this witness. As Section 120B of the Indian Penal Code is invoked by the prosecution in Crime No.313 of 2015, plea of alibi is of no relevance.

7 The learned APP further argued that subsequent to registration of Crime No.313 of 2015 in which Kishor Nagare was murderously assaulted, subsequently, he was killed on 11th July 2018 and accordingly, Crime No.263 of 2018 came to be registered against the present applicant/accused and co-accused with Police Station Panchvati. Though the applicant/accused was in jail at the relevant time, statement of witnesses recorded during the course of investigation of this crime goes to show that Kishor Nagare was done to death in execution of conspiracy hatched by the present applicant/accused Venkatesh Nanasaheb More when he was brought to the court for attending the court case. With this, the learned APP prayed for rejection of the instant application.

8 Case of the prosecution which has resulted in registration of subject Crime No.296 of 2016 is in respect of murder of Sunil Wagh and murderously assault on his brother Hemant Wagh at about 8.30 p.m. of 27th May 2016 at

Makhmalabad Road, Kranti Nagar, Nashik. Hemant Wagh and his deceased brother Sunil Wagh along with their mother Mandabai Wagh were doing the work of selling panipuri and bhelpuri on handcart. At the time of incident, Sunil Wagh (since deceased) saw a mob of people led by Kundan Pardeshi approaching towards him and his brother. He warned his brother Hemant Wagh and they both started running away. However, soon they were accosted by that mob which was comprising of Kundan Pardeshi, Karan Pardeshi, Akshay Ingle, Ganesh Kalekar, Ravi Pardeshi so also the present applicant/accused and others who were armed with sticks. They both were assaulted by the accused persons by means of sticks. During the course of that assault, Kundan Pardeshi lifted a big stone and hit it on head of Sunil Wagh.

9 There are several eye witnesses to the incident in question who are stating name of the applicant/accused as one of the assailants who assaulted the deceased and the injured by means of stick.

10 The prosecution has invoked Section 149 of the Indian Penal Code so also Section 120B thereof. Section 149 deals with criminal liability of every member of unlawful assembly guilty of committing the offence in prosecution of the common object of such unlawful assembly. An object is entertained in the human mind. It being merely a mental state, no direct evidence can be available on this aspect. Therefore, common object is to be gathered from the acts which persons commit and the result therefrom. Common object can reasonably be collected from the nature of the assembly, arms it carries and behaviour at, before and after the incident. Once membership of an unlawful assembly is established, it is not incumbent to establish whether any specific overt act has been done by any accused. Mere membership of an unlawful assembly is sufficient and every member of unlawful assembly is vicariously liable for the acts done by other members, either in prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed.

11 Statements of two witnesses namely Prashant Phad and Sagar Aware are depicting sharing of common object of unlawful assembly by the present applicant/accused. Statement of Prashant Phad goes to show that he saw 15 to 20 young boys assembled at the house of Kundan Pardeshi. He heard statement of Kundan Pardeshi addressed to those persons which is to the effect that Sunil Wagh and Hemant Wagh became insolent and they need to be murdered. Statement of both these witnesses goes to show that then weapon of offence i.e. sticks were handed over to the co-accused which included the present applicant/accused. That is how the mob started proceeding towards the spot of the incident.

12 Now let us prima facie examine what was the behaviour of the unlawful assembly. Report of postmortem examination of Sunil Wagh shows that there were in all 18 injuries all over his body in the form of contusions and abrasions as well as lacerations. There were two lacerated injuries on his

head, no doubt because of hitting of the stone. Section 300 of the Indian Penal Code provides that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such an act without any excuse, then such person commits murder. In the case in hand, extensive injuries caused by every accused person on body of deceased Sunil Wagh coupled with earlier meeting at the house of co-accused Kundan Pardeshi prima facie reflects common object of the assembly. Even the other victim Hemant Wagh had suffered fracture injuries to his right tibia intra-articular as well as right media malleous apart from head injury.

13 I have carefully perused the orders passed while releasing the co-accused in this case subsequent to rejection of the application for bail moved by the present applicant/accused. Prima facie, it is found that purport of Section 149 of the Indian Penal Code is not considered while releasing the co-accused.

14 Parity alone cannot be a ground for releasing the accused in a serious crime on bail. In the case in hand, one of the victims of the crime in question i.e. Hemant Wagh is still alive.

15 The applicant/accused has a checkered criminal history. Following offences are registered against him and it is argued by the learned APP that after getting his release on bail in several offences, the applicant/accused has repeated the commission of serious crimes subsequently.

Sr. No.	Police Station	C.R.NO.	Under Section
1	Sarkarwada	252/2010	354, 323, 504, 506 IPC
2	Panchavati	623/2010	324, 452, 143, 147, 148, 149, 323, 504, 506, 427 IPC and 135 Bombay Police Act
3	Sarkarwada	225/2011	394, 326, 427, 504, 34 of IPC
4	Panchavati	499/2011	307, 326, 323, 506, 34 IPC
5	Gangapur	114/2013	302, 307, 143, 147, 148 IPC, 4/25 Arms Act and 135 of Bombay Police Act
6	Sarkarwada	313/2015	302, 307, 324, 323, 143, 147, 149, 120B

			IPC, 3/25 Arms Act and 135 Bombay Police Act
7	Panchvati	296/2016	302, 307, 323, 143, 144, 147, 148, 149, 120B, 109, 212 IPC and 135 Bombay Police Act and 7 of Criminal Law Amendment Act
8	Panchvati	263/2018	302, 120B, 34 IPC and 3, 4 and 25 of Arms Act and 135 Bombay Police Act

16 Crime No.313 of 2015 is registered against the applicant/accused and the co-accused for offences punishable under Sections 302, 307, 324, 323, 143, 147, 148, 149, 120B of the Indian Penal Code as well as under Sections 3(25) of the Arms Act and Section 135 of the Maharashtra Police Act. Rahul Jadhav was murdered and Kishor Nagare came to be murderously assaulted in that crime which took place on 16th September 2015. Statement of Kishor Nagare recorded by Investigator in that Crime No.313 of 2015 shows that the present applicant/accused by speaking with Kishor Nagare on cell phone had threatened to kill him. Subsequently, in the assault, Rahul Jadhav came to be

murdered and Kishor Nagare was injured. The prosecution has invoked provisions of Section 120B of the Indian Penal Code in this crime.

17 Subsequent to registration of Crime No.313 of 2015, injured eye witness Kishor Nagare came to be murdered on 11th July 2018 and accordingly Crime No.263 of 2018 came to be registered against the present applicant/accused as well as the co-accused. Statement of one of the witnesses recorded in Crime No.263 of 2018 shows that conspiracy was hatched by the present applicant/accused when he was taken out from the jail for being produced before the court and that is how injured witness Kishor Nagare was subsequently murdered.

18 The cumulative effect of the foregoing discussion requires me to hold that though other co-accused are released on bail by this court as well as by the learned trial court subsequent to rejection of the earlier bail application of this applicant/accused, the applicant/accused is not entitled to be

released on bail. In this view of the matter, the following order :

ORDER

- i) The application is rejected.
- ii) Needless to mention that, all these observations are prima facie in nature and they shall have no bearing on the trial.

(A. M. BADAR, J.)

**Arti Vilas
Khatate**

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