

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2923 OF 2017

Venkatesh Nanasaheb More ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr.Niranjan Mundargi i/b. Mr.Himanshu Kode for the applicant.

Mr.Prashant Jadhav, APP for the respondent/State.

Assistant Commissioner of Police Chavvan, Division-1, Nashik present.

Assistant Police Inspector K. D. Wagh, Panchavati Police Station, Nashik present.

CORAM : A.M.BADAR J.

DATED : 8th MARCH 2018.

P.C. :

1. This is an application for release of the applicant on bail during the pendency of the trial of Crime No.296 of 2016 of offences punishable under Sections 302, 307, 323, 143, 144, 147, 148, 149, 120(B), 109, 212 read with 34 of the IPC, under Section 135 of the Maharashtra Police Act as well as under Section 7 of the Criminal Law Amendment Act registered at Police Station Panchvati, Nashik at the instant of first Informant Mandabai Wagh.

2. Heard learned Advocate hearing for the applicant/accused. He argued that perusal of the statement of injured Hemant Wagh as well as

those of Ramdas @ Pappu Changle and Prashant Yalmame along with the FIR lodged by alleged eye witness Mandabai Wagh shows that no overt act was attributed to the present applicant. Mandabai has not named the applicant in the FIR. Hemant Wagh has only stated that the applicant was one of the member with others. What is stated by these witnesses is to the effect that a mob of 18 to 20 persons was holding sticks in their hands. Even if the prosecution case is accepted as it is, then also it cannot be said that the applicant is vicariously liable for commission of murder of Sunil Wagh by co-accused Kudan Pardeshi. The assault was by means of sticks and it ended with a picking of stone by co-accused Kundan Pardeshi and hitting it on head of Sunil Wagh. It was an instantaneous act of the co-accused and therefore vicarious liability cannot be fasten on the present applicant even if it is argued that he was present on the scene of the occurrence. To buttress his submission, the learned Advocate for the applicant drew my attention to the report of postmortem examination of deceased Sunil Wagh and pointed out that except abrasions and contusions, the deceased had not suffered any other injury and fatal injury was attributed to the act of hitting the stone on head of the deceased by the co-accused. It is further argued that alleged alleged eye witness Ramdas had an axe to grind against the present applicant as the present applicant was co-accused in the trial of murder of brother of Ramdas Changle. The learned Advocate for the applicant further argued that there is inordinate delay in recording statement of witnesses such as Sagar Aware and Prashant Phad. Statement of Prashant Yalmame is recorded on 1st September, 2016 with a lame excuse for delay. The Test Identification was conducted on 8th August, 2017 and prior to that

arrest of the applicant was flashed on the TV Channels and therefore the submission of the learned Advocate for the applicant, further pretrial detention of the applicant is not warranted.

3. The learned APP opposed the application by contending that there is evidence in respect of conspiracy reflected from statement of Sagar Aware and Prashant Phad. Eye witness Prashant Yalmame and Ramdas Changle are showing complicity of the applicant in the crime in question. Injured Hemant Wagh also stating about role played by the applicant in the crime in question. The learned APP submitted that seven offences are registered against the present applicant. In reply, the learned Advocate appearing for the applicant submitted that the applicant is acquitted in almost all of the offences registered against him.

4. I have carefully considered the submission so advanced and perused the record made available. According to the prosecution case, the accused persons hatch conspiracy to eliminate Sunil Wagh and Hemant Wagh and in execution of that plan, they formed unlawful assembly and committed murder of Sunil Wagh.

5. The incident in question took place on 27th May, 2016 at about 8.30 pm at Makhmalabad Road of Krantinagar, Nashik. Sunil Wagh (since deceased), his brother Hemant Wagh-injured, as well as their mother Mandabai – the first informant were doing the work of selling panipuri and bhelpuri on the hand cart. Sunil Wagh saw a mob led by Kundan Pardeshi approaching towards them and therefore he cautioned

his brother Hemant Wagh and then they both started running away. Injured Hemant Wagh in his statement 29th May, 2016, has stated that he and his brother Sunil were assaulted by Kundan, Karan and Ravi Pardeshi as well as Akshay, Ganesh, Rakesh, Jaya, Kiran, Arjun, Munna etc. as well as the present applicant by means of sticks and during the course of this assault, Kundan Pardeshi lifted big stone and hit it on head of Sunil. His statement in the form of the dying declaration was recorded on 2nd June, 2016, wherein he has stated names of some of the assailants and has stated that he has complain against them as well as other persons. This Hemant Wagh has suffered fracture injuries to his right tibia intra articular as well as fracture of right media malleous apart from the head injury.

6. Statements of Sagar Aware and Prashant Phad are to the effect that on the day of incident, they had seen 15 to 20 persons including the present applicant assembled at the house of Kundan Pardeshi and Kundan Pardeshi was stating them that Sunil and Hemant Wagh have became insolent and therefore they needs to be eliminated. These two witnesses have further stated that then Kundan and Karan Pardeshi supplied sticks to persons who assembled there including the present applicant.

7. Prashant Yalmame was examined by police on 1st September, 2016. As per his statement, because of terror of accused persons in the locality and as on earlier occasion the accused persons had assaulted and looted him, he had not dare to disclose the incident to the police but as he came to know that because application of Maharashtra

Control of Organised Crime Act, 1999 (MCOCA), the names of the witnesses are being kept secret, he is disclosing incident to police. This witness has stated that he has seen present applicant as well as other accused persons assaulting Sunil and Hemant Wagh. Witness Ramdas Changle has stated that accused persons including the present applicant assaulted Hemant and Sunil Wagh by means of sticks and thereafter, co-accused Kundan had pelted stone on head of Sunil Wagh.

8. The report of postmortem examination of Sunil Wagh shows 18 injuries all over his body in the form of contusion and abrasion as well as laceration. There were two lacerated injuries on his head causing his death.

9. Section 300 of the IPC provides that if the person committing the act knows that it is so imminently dangerous that it must in all probabilities 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, not a single body part of Sagar was spared from injuries which were inflicted by sticks except the lacerations on his head caused by a blow of a stone. Statement of Sagar Aware and Prashant Phad reflects that unlawful assembly was formed at the house of Kundan Pardeshi in order to commit murder of Sagar Wagh and Hemant Wagh and for that purpose sticks were supplied by all members of unlawful assembly. Section 149 of the IPC, makes it clear that when an offence is committed in prosecution of common object of the unlawful assembly it would generally be an offence which the member of unlawful assembly knew was likely to be committed in prosecution of

the common object of such assembly. As stated, statement of these two witnesses *prima facie* reflects formation of common object of committing murder. Though the weapons were sticks, member of unlawful assembly and number of blows inflicted reflects the possibility of commission of an act so imminently dangerous so as to cause death of the victim.

10. In this view of the matter, it cannot be said that what was intended was not commission of murder but inflicting of some other injury by the assailants on the victims. The effect of hostility of Ramdas Changle with the applicant requires consideration at the time of the trial so also the effect of delayed recording of statements of witnesses.

11. In the result, no case for bail is made out, the application, therefore, rejected.

(A.M.BADAR J.)