

HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 643 OF 2019

Malan Gulab Phadtare

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr. D. D. Rananaware, Advocate for the Applicant.

Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 16th July, 2019.

P. C. :-

1. The Applicant is seeking anticipatory bail in connection with C.R. No. 94/18 registered with Vaduj Police Station, Dist. Satara. Initially the offence was registered under Sections 302, 324, 504, 506 read with 34 of the IPC. However, at the time of the filing of chargesheet Section 302 was dropped and instead chargesheet was filed under Section 304 alongwith other aforementioned offences.
2. The FIR in this case is lodged on 25th February 2018 by one Mahendra Phadtare. He has stated in his FIR that the present applicant's husband and the informant's father had adjoining lands at Vakeshwar. There was dispute in respect of their respective portions.

The first informant has stated that the applicant's family was using informant's land for entering their own field and therefore, there was dispute between the two families.

3. On 24th February 2018, a meeting was held to resolve the issue. However, the applicant's husband did not attend the meeting and therefore, the informant's family decided to approach the Tahsildar by filing appropriate proceedings. On 25th February 2018 at around 11.30 a.m. the applicant's husband, son and nephew had entered into the land of the first informant with JCB machine and tractor. The informant and his father went there and told the applicant's family not to continue with their work. However, there was heated exchange of words. The applicant's family abused them. Applicant's son Santosh Phadtare pushed the informant. They started assaulting the informant with fist blows. When the informant's father tried to intervene, Gulab Phadtare, Santosh Phadtare and Ganesh Phadtare attacked him. The informant's father fell down. All these three accused assaulted him on his chest. The informant's brother Mahesh Phadtare came to intervene. Accused Santosh bit him. It is alleged in the FIR that apart from these three accused, the present applicant abused and threatened informant's father. The informant's father died at the spot

itself. Therefore, this FIR was lodged.

4. After the FIR was lodged, the investigation was carried out and as on today, the chargesheet is already filed. Apart from the first informant, there are statements of his brother Mahesh Phadtare and mother Shakuntala Phadtare, who had narrated the same story as narrated in the FIR. Besides the family members, there are statements of other witnesses, who had witnessed the incident viz Shivaji Phadtare, Ashok Phadtare, Amol Phadtare, Santosh Phadtare and Rajendra Phadtare. All of them have narrated practically the same story. The investigation papers contain medical certificate of Mahendra Phadtare which shows that he suffered one abrasion over right side of face and a blunt injury. The injuries were not life threatening. Santosh Phadtare had suffered one abrasion with contusion on left eye below the lateral part. The Post-Mortem report shows that there was no external injuries on the dead body of the deceased. The opinion of the medical officer in respect of cause of death mentioned that the deceased had suffered heart attack previously. At the time of the incident, because of the assault and because of the stress, there was strain on the heart, due to that heart attack was possible. This is the opinion given by the medical officer

attached to Rural Hospital, Vaduj.

5. Heard, Mr. Rananaware, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

6. Learned counsel for the applicant submitted that the offence under Section 302 is not made out. In any case the police have dropped that charge. As on today the major offence alleged against the accused is under Section 304 Part II. He submitted that there is no external injuries on the dead body indicating that the deceased was assaulted by any of the accused. He submitted that the applicant's custodial interrogation is not necessary.

7. As against this, the learned APP submitted that all the accused including the present applicant were on the spot when the incident took place. There are eye witnesses who are supporting the prosecution case. Therefore, applicant does not deserve the relief of anticipatory bail.

8. I have considered the submissions advanced by both the parties. The story of the prosecution is very specific. The main role is attributed to the accused Gulab Phadtare, Santosh Phadtare and Ganesh Phadtare. The only role attributed to the present applicant is that, she had abused and threatened the wife of the deceased. There

are no allegations that the present applicant had caused assault on the deceased or had abused or threatened the deceased. Looking at her role, her custodial interrogation is not necessary. However, the applicant will have to attend the police station to establish that she is available for investigation and for facing trial. Hence, the order:-

ORDER

- (i) In the event of her arrest in connection with C.R. No. 94/18 registered with Vaduj Police Station, Dist. Satara, the Applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station from 23rd July 2019 to 26th July 2019 between 03.00 to 05.00 p.m.
- (iii) The applicant shall be interrogated in the presence of a lady police officer.
- (iv) The applicant shall diligently attend all the dates in the court during trial.
- (v) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)