

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

CRIMINAL WRIT PETITION NO. 1736 OF 2018

- | | | |
|----|---|---|
| 1. | Ganesh Kundalik Jadhav |] |
| | Age : 27 years, Occ : Labour, |] |
| | R/o. Wing 1 Building, Room No. 204, |] |
| | Varad Apartment, Jadhavwadi, |] |
| | Chikali, Pune. |] |
| 2. | Sadguru Mahadev Kadam |] |
| | Age : 46 years, Occ : Business, |] |
| | R/o. Kadam Niwas, Sambhaji nagar, |] |
| | Kharalwadi, Pimpri, Pune. |] |
| 3. | Umar @ Chotu Mohammd Pathan |] |
| | Age : 26 years, Occ : Labour, |] |
| | R/o. Bajarang Nagar, Kadam Chawl, |] |
| | Kharalwadi, Pimpri, Pune |] |
| 4. | Santosh @ Mundy Magan Arvekar |] |
| | Age : 44 years, Occ : Labour, |] |
| | R/o. Near Kamble Building, Kharalwadi, |] |
| | Pimpri, Dist. Pune. |] |
| 5. | Pravin @ Zingrya Mahadev Kadam |] |
| | Age : 29 years, Occ : Labour, |] |
| | R/o. Kadam Niwas, Sambhaji nagar, |] |
| | Kharalwadi, Pimpri, Pune. |] |
| 6. | Satish Mahadev Kadam |] |
| | Age : 32 years, Occ : Labour, |] |
| | R/o. Kadam Niwas, Sambhaji nagar, |] |
| | Kharalwadi, Pimpri, Pune. |] |
| 7. | Santosh @ Balu Chandrakant Kadam |] |
| | Age : 28 years, Occ : Labour, |] |
| | R/o. Bajrang Nagar, Opp. Dr. Bake |] |
| | Company, Khralwadi, Pimpri, Pune |] |
| 8. | Dattatraya @ Phatya Gulab Kalapure |] |
| | Age : 29 years, Occ : Labour, |] |

R/o. H.A. Colony, I/116,
Pimpri, Pune.

]]
]]
]] **...Petitioners**
(Orig. Accused)

Versus

The State of Maharashtra
Through Sr. P.I. Pimpri Police Station
District : Pune.

]]
]]
]] **...Respondent**

Mr. Ashok Mundargi Senior Advocate I/by. Jayant J. Bardeskar for
Petitioner.

Mr. Vinod Chate, APP for Respondent – State.

CORAM : S.S. SHINDE, J.
DATE : 29th JULY 2019

P.C:-

1. This Petition takes an exception to the order dated 23.03.2018 passed below Exh. 6 in Sessions Case No. 590 of 2017 by the learned Addl. Sessions Judge, Pune rejecting the application for discharge filed by the present Petitioners.

2. The prosecution case in nutshell is an under:-

It is alleged in the complaint that, Subhash Hardankar (since deceased) is a childhood friend of the Complainant. That the deceased is to like to take part in social activities and therefore used to come in the locality where the complainant used to reside. On 09.04.2017 at about 7 P.M., when complainant and his friend Datta Ingale were together the deceased also

came there and thereafter all three had been to the Hotel Balaji for having tea. It is alleged that, the deceased informed the complainant that Accused No. 1 Kaliya @ Sandeep Kalapure is threatening the deceased an alleging, that his job was lost because of the deceased and, also that the deceased was campaigning against Kailash Kadam and therefore he will have to face the consequences. It is also decided by the complainant that, in the evening they will go to attend the birthday party of a friend near Mahesh Mitra Mandal and will be attending the dinner in the said party.

3. It is further alleged that, in the evening at 10 P.M. the complainant and his friend Datta Ingale had been to Mahesh Mitra Mandal Chowk and thereafter came to Patel Chicken Center and were chit-chating. At the said time the deceased was coming from Khararbai Mandir on his motor cycle. It is alleged that, when the deceased reached near shop of one Babar near Hanumn Chowk, the accused No. 1 Kaliya @ Sandeep Kalapure, Accused No. 2 Ghadge and Accused No. 3 Abhijet Kalpure stopped deceased and had a argument with him. It is further alleged that, one Kartik Shingade went near the deceased to inquire, if there was any problem, to which the deceased informed that, there was no problem. It is also alleged that the Complainant was watching the said incident from some distance, and during the said time the Accused persons pushed the deceased near the public latrine, where the Petitioner No. 2 Sadguru Kadam came and assaulted the

deceased on his head with the cement block. It is further alleged that, the other accused persons i.e. Ghadge, Sandip Kalapure, Abhijeet Kalapure, Datta Kalapure, Santosh Arbekr, Pravin Kadam (Petitioner No. 1 herein), Satish Kadam, Ganesh Jadhav (Petitioner No. 2 herein), Chotya Pathan and Santosh Kadam assaulted the deceased on his head and body with the cement block and fist blows. That after seeing the said incident the complainant informed the friends and went to the spot, where they noticed the deceased lying in the pool blood. Therefore, they shifted him to Y.C.M. Hospital, where the victim was declared dead.

4. Thereafter, the complaint came to be registered by the Complainant bearing C.R. No. 201 of 2017 registered with Pimpri Police Station for offence punishable u/s. 302, 323, 342, 506, 143, 147, 148 and 149 of the Indian Penal Code dated 10.04.2017. Thereafter, present petitioners came to be arrested, and were remanded to police custody and thereafter to the judicial custody, and presently the petitioners are in judicial custody. Thereafter, the investigation was completed and charge sheet is filed against the present petitioner alongwith other accused persons before the Ld. J.M.F.C, Pimpri. As the offence is punishable u/s. 302 of the Indian Penal Code, same is exclusively triable by the Court of Sessions, the Ld. J.M.F.C. was pleased to commit the said matter before the Sessions Court at Pune.

5. Thereafter, it is the case of the Petitioners that, considering the evidence against the present petitioners in the entire charge sheet, and the fact that the Petitioners were never at the spot of the incident on the alleged date, time and place, which is evident from the CCTV Footage and the statement of the witnesses which is part of the charge sheet, the Petitioners preferred Petition on 09.02.2018 below Exh. 6 in the Court of Sessions bearing Sessions Case No. 590 of 2017 u/s. 227 of the Code of Criminal Procedure praying for discharge from the Sessions Case from all the charges.

6. Learned Addl. Sessions Judge, Pune vide its impugned order dated 23.03.2018 was pleased to reject the Petition of the Petitioner for discharge on the ground that, the two witnesses have named the present Petitioners, and also on the ground that the CCTV footage does not cover the entire incident.

7. Being aggrieved and dissatisfied by the impugned order dated 23.03.2018 passed by the learned Addl. Sessions Judge, Pune below Exh. 6 in Sessions Case No. 590 of 2017 the Petitioners by way of filing the present petition have approach this Court by invoking the Writ jurisdiction.

8. Mr. Ashok Mundargi,` learned Senior Counsel appearing for the Petitioners made the following submissions:

The Petitioners are implicated an accused in the Crime No. 201/2017 registered with Pimpri Police Station merely out of political rivalry and by creating a false and imaginary story alleging the Petitioners have assaulted the deceased with cement block, fists and blows. Admittedly, the Petitioners were not even present on the spot when the alleged incident occurred. It is alleged by the complainant and the other so called eye witnesses that, the Accused Sadguru Kadm assaulted the deceased with cement block and thereafter the present petitioners along with the other accused persons have assaulted the deceased with the cement block, fists and blows. It is pertinent to note that, at the relevant time, when the alleged incident occurred, the entire incident is recorded in CCTV Camera of office of Kailash Kadam. That from the said CCTV footage it is crystal clear that the present petitioners were not even present on the spot when the alleged incident of assaulting the deceased occurred on 09.04.2017. During the course of investigation the investigating officer has seized the said CCTV footage and also the transcript of the said CCTV footage is part of the charge sheet. That, the in entire CCTV footage the present Petitioners are not seen, and there presence is not established and therefore the Petitioners cannot be prosecuted in the present case for charge u/s. 302, 323, 342, 506, 143, 147, 148 and 149 of Indian Penal Code.

9. It is submitted that, in the said CCTV footage, it is revealed that one Kalya @ Sandip Kalapure, Praful Ghadage, Abhijit Kalapure were only present at the spot with the deceased and after the incident the said Accused persons ran away from the spot. It is also evident that after the incident other surrounding people came to the spot and shifted the deceased in the injured condition to the hospital. But, in the entire CCTV footage the presence of the present petitioners are not seen in the footage. Therefore, it is crystal clear that the present petitioners are falsely roped in the present case by the complainant and the interested witnesses alleging the petitioners have also assaulted the deceased with cement block and also with fists blows. The hard-disk containing the records of the CCTV footage dated 09.04.2017 where the alleged incident of assaulting the deceased has taken place, the said CCTV footage is part of the charges sheet.

10. It is further submitted that, the prosecution has filed charge sheet against the present petitioners for the offence punishable under Sections 302, 323, 342, 506, 143, 147, 148 and 149 of the Indian Penal Code alleging that the Petitioners on the date of incident was present on the spot and has assaulted the deceased along with other accused persons. That under Section 106 of the Indian Evidence Act, the prosecution has to establish the presence of the present petitioners on the spot on the date and time of the alleged incident. In the present case, it is evident from the CCTV

footage that the petitioners were not present and have not participated in the alleged offence. That as per the CCTV footage the transcript of the said CCTV footage is also part of the charge sheet. The investigating officer has recorded the statement of the witnesses who have seen the CCTV footage / transcript. That there are in all 18 witnesses which are seen in the CCTV footage and the statement u/s. 161 of the Code of Criminal Procedure is recorded during investigation by the investigating officer, and which is a part of the charge sheet. That all the witnesses do not named the present Petitioners as assailants. That the said witnesses, who are independent witnesses only named Sndeeep Kalapure, Abhijeet @ Abhi Kalapure, Pravin Sawant. Therefore, considering that not only the CCTV footage but also the witnesses who have witnessed the entire incident have not named the present petitioners, hence petitioners deserves to be discharged. The learned Sessions Judge while rejecting the petition for discharge have not considered the said material facts and the statement of the independent witnesses, and only because the CCTV footage does not cover the entire incident has rejected the petitioners application for discharge.

11. It is submitted that, the learned Sessions Judge was pleased to rely on the statement of the complainant Datta Ingale, Kartik Shingarde, but it is pertinent to note that all the witnesses who alleged to have seen the preset Petitioners while committed an alleged offence are all interested

witness, friend of advocate Sunsil Muncharkar and most importantly all the said witnesses who claimed that the present petitioners have assaulted the deceased are not seen even in the CCTV footage. All the said witnesses have come at the spot of incident after the alleged offence. Therefore, it is crystal clear that so called eye witnesses have only with a malafide intention have named the present Petitioners.

12. It is further submitted that, on the date and time of incident the Petitioner Pravin Kadam was present in the house i.e. Kdam Niwas, in front of Dr. Becko, Sambhaji Nagar, Kharadwadi, Pimpri. That the said spot of incident and the house of the petitioner is at the distance of 1.5 to 2 Km. Therefore, it is impossible that the Petitioner can be at the two different places at the same time, which is at the distance of 1.5 to 2 Km. That the Pravin Kadam for the security and the safety of the family members and the house building have installed CCTV footage in the said building / house. That from the perusal of the said CCTV footage, it is crystal clear that Pravin Kadam was present in his house on the day and time when the alleged incident occurred and the Petitioner is falsely roped in the present case out of political rivalry. The Petitioner Ganesh Jadhav was also not present on the spot of incident on the date and time, when the alleged incident occurred. The Petitioner No. 1 along with his friends had been for a dinner at Hotel Shetkari Mala at Akurdi, Taluka : Chichwad, Dist. Pune and was

present in the said hotel from 8.30 p.m. to 10.30 p.m on 09.04.2017. That the said hotel is at the distance of 2 to 3 Km from the spot of incident. That the said fact is evident from the footage which is recorded and saved in the hard disk of the CCTV cameras which is installed in the Hotel of Shetkari Mala. That the family members of the Petitioner No. 1 were informed by the present petitioner that, he is not involved in the present case and was in the hotel i.e. Shetkari Mala with his friends having dinner. The family members of the Petitioner inquired with the Hotel owner who forwarded the footage of the relevant time i.e. 09.04.2017 on whatsapp to the family members of the Petitioner No. 1. That, after perusal of the said CCTV footage received through whatsapp by the family members of the Petitioner No. 1 on their mobile phone, it is evident that the petitioner was present in the hotel having dinner with his friends on the date and time, when the alleged incident occurred. The said fact was also informed to the investigating officer during the course of investigation, but the investigating machinery believing the complainant and interested witnesses blindly, have filed charge sheet against the present petitioners before the learned J.M.F.C. at Pune.

13. It is submitted that, admittedly, no motive is attributed to the present petitioners to commit homicidal death of the deceased. There was no enmity between the petitioners and the deceased. It is admitted fact that,

the accused Kalya @ Sandip Kalapure, had a grudge against the deceased. The deceased used to get the information under Right to Information Act, and filed complaints against the concerned Municipal Officers of PCMC. That the accused Sandip Kalapure was working as Secretary in Balbhuvan School, Khararwadi. The deceased alleged that Sandip Kalapure was not working in the said school and therefore, had made various complaints to the authority due to which the Sandip Kalapure lost his job. Therefore, Sandip Kalapure was annoyed and angry with the deceased, due to which on the alleged day of the incident, there was a heated arguments between the deceased and Sandip Kalapure, which ended up into a free fight resulting into homicidal death of the deceased. From the said facts of the case, it is crystal clear that the incident occurred as of sudden during the heated arguments between the deceased and Sandip Kalapure. Therefore, in the entire charge sheet there is no allegation that the Petitioners had any motive or intention to commit the alleged crime or were even aware about the dispute between the deceased and the Sandip Kalapure.

14. It is the case of the prosecution that 11 to 12 accused persons have assaulted to the deceased with cement blocks. But, after perusal of the post mortem note in the column No. 17, it is noted that the deceased has sustained, four CLW on the occipital region and fore head of the deceased, one contusion on the shoulder and one CLW on the dorsum of the left hand

with multiple abrasion. That, admittedly, there are 6 CLW injuries on the dead body of the deceased. Therefore, the prosecution case cannot be believed that 12 people have assaulted the deceased with the cement block. At the same time, if the prosecution case is believed then the deceased should sustain more than cruel CLW or severe injuries which is contrary to the record / notings of the post mortem reports. That the present complaint and the entire case is politically motivated only with a view to implicate the leaders / members of the opposite political party in the present case so as to detain all the leaders / members of the opposite political party in jail, so as to bring an end to the political opposition in their constituency.

15. It is submitted that, in Ward No. 9 of Pimpri Chinchwad Municipal Corporation, there are two fragments, one fragment is of Congress Party headed by Kailash Kadam, Sadguru Kadam, who are brothers of the Petitioner No. 1 and other fragment is of NCP. The said is headed by one Advocate and his wife Geeta. That, the family of the said advocate was initially in Congress party, and the Kadam Family helped wife of said advocate in PCMC Election of 2012. But, thereafter, said Advocate joined the NCP Party and thereafter, started to file false cases against the Kadam family and their supporters to suppress opposition in their constituency. It is further submitted that, the spot where the alleged incident has occurred is a road where there are number of shops and people. That, in the entire charge

sheet the investigation officer has recorded several statements but only the interested witnesses who are friends or supporters of rival group of the petitioners have claimed to have witnessed the incident, alleging that the present Petitioners were one of the assailants with the other accused persons, in their statement under Section 161 of the Cr.P.C. That to support the false story of the complainant, said Advocate also made his supporters friends Datta Ingale, Shailendra Alkute and others to give identical statement implicating the petitioners falsely.

16. It is submitted that, the present petitioners are named only because they are supporters or relatives of Kailash Kadam and the Petitioner No. 2 Sadguru Kadam. That only with the intention to have unopposed elections and to succeed in the Corporation election and the local politics in their respective constituency, the petitioners have been falsely implicated in the alleged crime. It is further submitted that, considering the evidence in the charge sheet and the evidence of witnesses, who have seen the CCTV footage of the cameras, it is evident that the presence of the present petitioners is not seen, and the present petitioners are falsely implicated in the aforesaid crime. That the learned Sessions Judge while rejecting the application of the Petitioners has not considered the entire record of the charge sheet and the documents which are annexed to the present petition.

17. That the learned Sessions Judge has relied only on the statement of interested witnesses whose version is totally contrary to the CCTV footage and the independent witnesses, which is part of the charge sheet and therefore the order dated 23.03.2018 passed below Exh. 6 in Sessions Case No. 590 of 2017 by the learned Addl. Sessions Judge, Pune is liable to be set aside. It is submitted that, the Supreme Court in the case of *Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra reported in (2008) 10 SCC 394* has explained the scope and ambit of powers of Trial Court under S. 227 and held that, if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge is allowed. Therefore, learned senior counsel appearing for the Petitioners prays that the present petition may be allowed and petitioners be discharged from offences alleged against them. It is submitted that, Supreme Court has also held that, in case when the prosecution witnesses themselves have made the prosecution case suspicious / doubtful, in that case the accused are entitled for discharge.

18. On the other hand, learned APP appearing for the Respondent relying upon the reasons assigned by the Sessions Court and also the charges sheet and its accompaniments submits that, there is sufficient material collected during the course of investigation and thereafter charge-

sheet is filed. There is evidence of eye witnesses and also medical evidence and other evidence which would show the involvement of the present petitioners and therefore, the petition may be dismissed.

19. I have given due consideration to the submissions of the learned Senior Counsel appearing for the petitioners and learned APP appearing for the State, with their able assistance perused the charge-sheet as well as its accompaniments and other material placed on record. It is true that, all the alleged eye witnesses have not named the petitioners. However, the complainant and other two witnesses have stated about the involvement of the petitioners in the alleged offences. The deceased suffered multiple injuries on vital parts. The Sessions Court in the impugned judgment observed that, the CCTV does not covered the entire incidence. During the course of submissions, learned Senior Counsel submitted that, Pravin Kadam was present in the house when such alleged incidence had taken place. His house is 1.5 to 2 Kms away from spot of incident. The Petitioner No. 1 along with his friends had been for diner at Hotel Shetkari Mala at Akurdi and CCTV of said hotel shows that, they were in the said hotel from in between 8.30 to 10.30 P.M. They were in the hotel for more than two to three hours. The aforesaid arguments would be available to the accused during the course of trial as their defence. The charge-sheet is filed for the offence punishable u/s. 302, 323, 342, 506, 143, 147, 148 and 149 of the Indian

Penal Code so there is allegation of forming the unlawful assembly with an common object of killing Subhash Hardankar (since deceased). The law doesn't contemplate evidence of multiple witnesses if the evidence of one eye witnesses is of sterling quality. When there are allegations of mob attack, it is desirable to have one or two witnesses. In the present case as already observed the statement of the complainant and also other to eye witnesses, namely Datta Ingale and Kartik Shingade, have stated about the involvement of the petitioners. Since the petitioners will have to face trial, it is not desirable to elaborate on the reasons. Suffice it to say that, reasons assigned by the Sessions Court are in consonance with the charge-sheet and its accompaniments and other material which was brought to the notice of the Sessions Court. There is no perversity as such. The view taken by the Sessions Court is plausible and reasonable.

20. With the above observations, Writ Petition stands rejected. The observations made by the Sessions Court in the impugned judgment or by this Court herein above are *prima facie* in nature and confined to the adjudication of the present Petition only. The Trial Court shall not get influenced by the said observations during the course of trial.

(S.S. SHINDE, J.)