

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1395 OF 2019
WITH
CRIMINAL APPLICATION NO. 993 OF 19**

Aadesh Shivaji Pawar

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Satyam H. Nimbalkar, Advocate for the Applicant.
- Mr. Satyavrat Joshi, Advocate for Intervener in APPP 993/19.
- Smt. A. A. Takalkar, APP for the State.
- Mr. S.S. Chavan, API, Saswad Police Station, Pune Rural.

**CORAM : SARANG V. KOTWAL, J.
DATE : 2nd AUGUST, 2019**

P.C. :

1. The applicant is seeking his release on bail in connection with CR No. 281/18 registered at Saswad Police Station, Pune under Sections 302, 307, 143, 145, 147, 148 read with section 149 of the IPC as well as under Sections 3 read with 25 of the Indian Arms Act. The FIR is lodged by one Sadhu Dalvi, who was the father of the deceased Santosh Dalvi.

2. The FIR is lodged on 1st August 2018 at about 3.20 a.m. in respect of the incident dated 31st July 2018 which had taken place at around 9.30 p.m. He has mentioned in his FIR that there was

previous enmity between the deceased Santosh Dalvi on one hand and one Dada Katke and Dattatray Katke on the other hand. On 31st July 2018, in the late evening Santosh was told by one of the villagers that the accused Dada Katke and Dattatray Katke had called him. Therefore, the first informant and his son Santosh both have proceeded towards Marathi school, where they were called. When they reached there, they saw there were about nine persons present. They had formed an unlawful assembly. Dada Katke, Bharat Gaikwad and Hemant Gaikwad pointed country made pistols towards the deceased. Dada Katke tried to fire at him. Dattatray Katke, Bharat Gaikwad and Hemant Gaikwad held the first informant. It is further alleged that Dada and Hemant fired at deceased Santosh. When Santosh had fallen down, the other assailants namely Deepak Bhandwalkar, Mayur Borade, Akshay Gaikwad and the present applicant assaulted him with kicks and fist blows. It is alleged that they assaulted the deceased by pelting stones on his face and head. Thereafter, all these assailants went away from the spot. After that FIR was lodged.

3. The investigation was carried out. The applicant was

arrested on 2nd August 2019. The investigation is over and charge-sheet is filed.

4. Heard, Mr. Satyam Nimbalkar, learned counsel for the applicant, Mr. Satyavrat Joshi, learned counsel for the intervener and Smt. Takalkar, learned APP for the State.

5. With the assistance of learned counsel, I have gone through the entire charge-sheet. Learned counsel for the applicant invited my attention to the various statements including statements recorded under Section 164 of the Cr. P.C. He submitted that not only there is variance in the story, but statements show that the deceased and his father, first informant, were the aggressors and there is no sufficient evidence to show that the present applicant had taken any part in the entire incident. He submitted that there is no recovery at the instance of the applicant. The prosecution case is not corroborated by any other circumstance. He submitted that if the statements of eye witnesses are read together, they clearly show that the applicant is falsely implicated.

6. Mr. Joshi as well as learned APP on the other hand submitted that a firearm was used in the offence and presence of

the applicant at the scene at this stage cannot be disputed. Mr. Joshi, learned counsel for the intervener submitted that since the firearm was used, it cannot be said that the applicant was not aware about the common object of the unlawful assembly.

7. I have considered all these submissions. I have also perused the statements of various witnesses including eye witnesses. The FIR itself make a reference to the present applicant's name as one of the persons, who had assaulted the deceased with kicks and fist blows and had pelted stones. However, his supplementary statement is recorded on 3rd August 2018. In that statement, the first informant had included three names i.e., Santosh Katke, Shobha Katke and Santosh Dhisre who were present and had thrown chilly powder in the eyes of the deceased. In the same supplementary statement the informant has included the name of the father of the applicant as one of the persons who had pelted stones on the deceased.

8. Apart from this, the first informant's statement recorded under Section 164 of the Cr. P. C., is important. In that statement significantly the first informant has not named the present

applicant at all. He has given specific roles to various accused and he has named many accused, but he has not made any reference whatsoever to the present applicant. He has not even said that the applicant was present at the scene at the time of incident or even before or after the incident. He has specifically attributed the role of pelting stone on the deceased to Dada Katke, Dattatray Katke, Mohan Gaikwad, Hemant Gaikwad and Akshway Gaikwad. He has specifically stated that Dattatray Katke, Dada Katke, Mohan Gaikwad and Hemant Gaikwad had pelted stones on the head of the deceased, because of which deceased had suffered head injuries.

9. Apart from that, there are statements of two other witnesses. Witness Abhijeet Dalvi has stated that the applicant was present with other accused when the incident took place. He has stated that the applicant and others assaulted the first informant, Sadhu Dalvi, with kicks and fist blows and they pelted stones. He has specifically stated that the deceased was lying in front of Dada Katke, Dattatray Katke, Bharat Gaikwad, Balu Gaikwad, Hemant Gaikwad and Akshay Gaikwad and they were pelting stones on the

deceased. Thus, even Abhijeet Dalvi has not stated that present applicant has assaulted the deceased. The witness Sachin Dalvi, whose statement is recorded under Section 164 of the Cr. P.C. shows that he had come at the spot when the incident was over and he had seen the accused running away from the spot. This witness has stated that present applicant was one of the assailants, who was running away from the spot. Beyond this he has not described the incident in his statement under Section 164 of the Cr. P.C.

10. There is one more eye witness Dattatray Kamthe, whose statement is also recorded under Section 164 of the Cr. P. C. He has stated that when the deceased was being assaulted, he tried to intervene. He has stated that Dattatray Katke, Mohan Gaikwad, Dada Katke, Akshay Gaikwad and Deepak Bhandwalkar were assaulting the deceased. He has stated that the present applicant had prevented this witness from intervening. This witness had not attributed the role of assault on deceased to the applicant.

11. Apart from that there are statements of two important independent witnesses namely Akshay Limbhore and Hanumant

Katke. They have not named the present applicant. Their statements are important in the context of the case because they are independent witnesses and they have stated that at the time of incident Suresh Katke and Dada Katke were sitting in their car. At that time, Sopan Patne, Pappu @ Dattatray Kamthe, Shahnawaj Pathan and others were shouting on the road. They were carrying stones and swords and some quarrel was going on. Sopan Patne had prevented the car from proceeding anywhere. He was talking on the phone. Thereafter, the deceased Santosh, his father, i.e., first informant and five to six others came there. They had formed unlawful assembly. They were shouting. The deceased said that the persons present there should not be left alive and they started assaulting Dada Katke and his father. Thereafter, the incident started. Dada and his brother Dattatray and others thereafter retaliated and in the incident deceased Santosh died. Statement of Hanumant Katke is on the similar lines. Both of them have not spoken about the presence of the applicant. Apart from that they have clearly stated that deceased and his group were the aggressors and they have mounted murderous assaulted on Dada

and others. Thus, the version of the first informant is falsified not only of his statement recorded under Section 164 of the Cr. P. C. but by independent witnesses as well. Thus, there is strong possibility clear enough even at this stage that the applicant is falsely implicated in the present case. The statements of eye witnesses, if read together, make out a case in favour of the applicant for his release on bail. There is no other incriminating circumstance.

12. It is needless to say that all these observations made in this order are only for the purpose of deciding this bail application. The trial court shall not be influenced by any of these observations while deciding the trial.

13. In this view of the matter, I am inclined to grant bail to the present applicant. Hence, the following order:-

ORDER

(I) The Applicant is directed to be released on bail in connection with C.R. No. 281/18 registered at Saswad Police Station, Pune, on his 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) Application stands disposed of accordingly.
- (iii) Intervener's application is also disposed of accordingly.

(SARANG V. KOTWAL, J.)