

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

CRIMINAL APPEAL NO.941 OF 2018

Mahendra Shivshankar Thakur Appellant

versus

The State of Maharashtra & Anr. ... Respondents

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- Mr.A.P. Mundargi i/b. Mr.Prashant B. Pawar, a/w Prachi Parmar, Advocate for Appellant.
- Mr.Rahul S. Kate, Advocate for Respondent No.2.
- Mr.H.J. Dedhia, APP for Respondent/State.

**CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE : 29th JANUARY, 2019.**

P.C. :

1. This is an Appeal preferred by the Appellant under the provisions of section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order dated 17/05/2018 passed by Additional Sessions Judge-1, Vasai, below Ex.2 in Sessions Case No.49/18. The Appellant is also praying for his release on bail during pendency of the said Sessions Case.

2. The charge-sheet in this case is already filed under section 302, 323, 324, 143, 147, 148 r/w 149 of Indian Penal Code, under section 25 of the Indian Arms Act and under section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
3. In all, seven accused are released on bail. The present Appellant had preferred Criminal Bail Application No.265/18 before Additional Sessions Judge-1, Vasai, for his release on bail before the charge-sheet was filed. The said Application was rejected vide order dated 12/04/2018. Thereafter, the charge-sheet was filed and he had preferred another Application below Ex.2 in Sessions Case No.49/18, which came to be rejected as mentioned earlier.
4. The FIR in this case was lodged by one Ravindra Mahadu Mali. According to him, his brother Baban Mali was carrying on construction business with the present Appellant

and others. However, subsequently their relations did not remain cordial. Baban's family came to know that the Appellant was constructing a structure on one of the lands which actually belonged to Baban's family. In that behalf, Suit No.106/06 was preferred by Baban against the Appellant and others before the Sub-Divisional Officer, Vasai. Since then, the two families were on enmical terms.

5. On 05/02/2018 at around 09.00 a.m. Baban returned home after dropping his son Om to his school. At that time, the Appellant was passing on his motorcycle on the road in front of Baban's house. At that time, there was quarrel between Baban and the Appellant. The FIR further mentions that the Appellant then went to his sister Sushila's house. The first informant and others were enquiring with Baban regarding the incident and at that time, the Appellant came near them. He was followed by many members of his family and they started abusing the first informant and others. It is alleged that the Appellant and others gave abuses with reference to the first informant's caste. The FIR

mentions that the Appellant and others were aware that the first informant and Baban belonged to Adivasi Malhar Koli caste. It is further mentioned in the FIR that the first informant tried to separate the quarrel and was taking Baban with him to their house. At that time, one Bunty from Appellant's group assaulted the first informant with a wooden stick causing bleeding injuries on the head. His brother Jagdish was also assaulted. The other family members of the Appellant held the first informant Ravindra Mali and his brother Jagdish to prevent them from going to Baban's rescue. At that time, the Appellant removed the revolver which he had concealed near his waist and fired on Baban's chest. Baban fell down. The villagers came to the spot of incident. The Appellant threatened to fire more rounds. Since the crowd gathered at the spot, the Appellant and his group went away from the spot. Baban had succumbed to his injuries on the spot. Thereafter the FIR was lodged by Ravindra Mali vide CR No.I-100/18 under the aforementioned sections at Waliv Police Station, District Palghar.

6. The charge-sheet contains statements of other eyewitnesses namely Jagdish, Manjula, Pooja Mali, Baban's widow Alka, Baban's daughter Kajal, Gangu Mali, Lalita Bhavar, Malti Mali and others. All of them have stated before the police that the Appellant took out the revolver and fired at the deceased, due to which the deceased suffered firearm injuries on his chest.
7. Apart from the statements of the eyewitnesses, another circumstance against the Appellant is the recovery of the firearm at his instance.
8. We have heard Mr.Mundargi, learned Senior Counsel for the Appellant, learned APP Mr.H.J.Dedhia for the State and learned Counsel Mr.Rahul Kate, for Respondent No.2, the first informant.
9. Mr.Mundargi, submitted that the Appellant had gone to temple and while returning quarrel took place between him

and the first informant's group. He has submitted that the allegations against the Appellant show that the incident had occurred suddenly. There was no premeditation. The charge-sheet shows that there was a mob of people. Mr.Mundargi further submitted that the Appellant's group had lodged cross FIR showing assault against their group. The first informant's family members assaulted Appellant's group, where the Appellant and others had suffered injuries. Mr.Mundargi invited our attention to the statement of Dr.Pankaj Desai which shows that the Appellant had approached Hansa Hospital. The Appellant had stated his name as Jayesh Patel. Dr.Sandip Bhagwan Patil had treated wounds suffered by the Appellant which needed 3-4 stitches. During investigation, Dr.Pankaj stated that the said Jayesh Patel was none other than the present Appellant.

10. Mr.Mundargi submitted that this statement in fact shows that the Appellant himself had suffered serious head injury. Mr.Mundargi therefore submitted that even if the

allegations in the FIR are taken at their face value, they show that the Appellant had right of private defence to protect himself and therefore no offence of murder is made out against him. Mr.Mundargi further submitted that majority of the eyewitnesses were from the group of the deceased.

11. As against these submissions, learned APP Mr.Dedhia and learned Counsel Mr.Kate, submitted that, apart from the relatives and friends of the deceased, there were independent witnesses from the village. They submitted that the incident could not have occurred on the spur of moment. They further submitted that it is a serious offence and the Appellant does not deserve to be released on bail.

12. Having heard both the sides, we find that in this case, the Appellant could not be released on bail. There are eyewitnesses to the incident and they have consistently given statements showing direct involvement of the Appellant in the Crime. The main role is ascribed to this Appellant who had fired

at the deceased from the close range. The statements of the first informant and his brother show that the Appellant had gone to the house of his sister Sushila and had come back. Therefore prima facie it cannot be said that Appellant acted on a spur of moment.

13. At this stage of consideration of bail, it is not possible to accept the submission of Mr.Mundargi that, the offence of murder was not made out and that it could be a much lesser offence. We are also unable to agree with Mr.Mundargi on his submissions that since the Appellant was returning from a temple, he had no intention to commit the murder. The material on record shows that after the quarrel had started, the Appellant had gone to his sisters house and had come back. Thereafter he had fired at the deceased.

14. There is recovery of the firearm at the instance of the present Appellant. Learned Trial Judge has dealt with these aspects while rejecting the application for bail.

15. In the light of this discussion, we are of the considered view that the Appellant does not deserve to be released on bail during pendency of the trial. Hence the Appeal is dismissed and the prayer for bail is rejected.

16. We make it clear that all the observations made in this order are prima facie observations and the trial Court shall not be influenced in any manner while rendering decision at the conclusion of the trial.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)