

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 1101 OF 2019

Satish Sukhdeorao Tayade .Vs. State of Maharashtra through PSO P.S. Civil
Lines, Akola, Dist. Akola.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Subodh Dharmadhikari, Senior Advocate with
Mr. C.S. Dharmadhikari and Mr. A. Shirwas, Advocates for
applicant.
Mr. M.K. Pathan, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 11, 2019

This is an application for regular bail filed by
applicant – Satish Sukhdeorao Tayade who is shown as
accused no.7 in charge-sheet filed by the investigating
officer in Crime No.225/2019.

2. Heard Mr. Subodh Dharmadhikari, learned
Senior Counsel for applicant and Mr. M.K. Pathan,
learned Additional Public Prosecutor for non applicant-
State. Also perused the entire charge-sheet.

3. Applicant is arrested on 09.05.2019 in
connection with Crime No.225/2019 registered with
Police Station, Civil Lines, Akola for the offence
punishable under Sections 302, 143, 147, 148, 149, 201,
109, 323, 327 and 506 of the Indian Penal Code and
Section 3 of the Prevention of Damage to Public Property
Act.

4. Main plank to the submission of the learned Senior Counsel is that looking to the role attributed to co-accused Pratik Tonde and one Mayur Ahir, this Court on 11.09.2019 and 27.09.2019 in Criminal Application (BA) No.809/2019 and Criminal Application (BA) No.822/2019 respectively released them on bail. It is his submission that case of the applicant is at par with those two co-accused who are released on bail. He, therefore, submits that on the principle of parity, applicant is entitled to be released on bail.

5. Learned Additional Public Prosecutor for the State would vehemently oppose aforesaid submission. He submits that though role attributed to the present applicant is at par with the role alleged to have been played by co-accused Pratik and Mayur, distinguishing factor in between their case is that their names were not figuring in the first information report. He submits that name of the applicant did figure in the first information report and he being a member of unlawful assembly, though there is no overt act attributed to him in respect of assault on deceased Kisanrao, with the aid of Section 149 of the Indian Penal Code the applicant is guilty and therefore he should not be released on bail.

6. First information report dated 06.05.2019 is lodged by Pravin Kisanrao Hundiwale. Gist of the report

shows that a dispute is going on in between two groups for retaining their control over “*Swami Vivekanand Rastriya Shikshan Prasarak Mandal, Khetan Nagar, Kaulkhed, Akola*” and “*Swami Vivekanand English High School, Khetan Nagar, Kaulkhed, Akola*”. The dispute is in respect of change report pending in the office of Assistant Charity Commissioner at Akola. The dispute was going on in between Pravin’s father i.e. deceased Kisanrao and co-accused Shriram Gawande.

7. As per report, on the day of incident i.e. on 06.05.2019, first informant and his father deceased Kisanrao were discussing their case with their Advocate Mr. Nitin Dhut. That time applicant and other eight named accused persons and 4 to 5 others came there in the office of Assistant Charity Commissioner and all of a sudden they started assaulting on Kisanrao by means of wooden chairs. Due to the said assault, Kisanrao fell on ground and was trying to save himself. The report further states that at that time co-accused Vikram alias Chotu Gawande took out fire extinguisher and assaulted on the head of Kisanrao resulting into blood injury, still he continued his assault. Similarly, co-accused Ranjit started assaulting by means of “*tocha*” (pointed article which is normally used for fixing thread in the case papers).

8. True it is that the name of the applicant did figure in the first information report however assault by

chair is not solely attributed to the applicant but it is attributed to him along with other co-accused persons. Therefore, at this stage it can be said that there is a general statement against the applicant about assault by means of chair.

9. Be that as it may, on next day i.e. 07.05.2019 a detailed statement of first informant Pravin was recorded which is part and parcel of the charge-sheet. The said statement shows that when deceased was discussing his case with Advocate Dhut that time the accused persons including the applicant came in the office of the Assistant Charity Commissioner and co-accused Shriram Gawande caught hold of Kisanrao and dragged him. That time to save him Pravin and his friend Suraj Andhare rushed to him. Detailed statement of Pravin would show that at that time present applicant and one Dinesh Rajput and co-accused Pratik Tonde (who is released on bail) caught-hold him. Pravin along with others were pushed towards the main door. His statement would show therefore the persons who were present in the office they started running here and there and at that time Shriram exhorted to kill Kisanrao. The detail statement shows that thereafter co-accused Ranjit Gawande assaulted on the head of Kisanrao by means of wooden chair. Statement also shows that Dhiraj Gawande then assaulted by another chair, due to assault of these two persons those chairs were broken in two

pieces and deceased shouted that he should not be killed. It is also the statement in his statement that that time two police personnel Rajesh Wankhade and Jayshan Gudadhe tried to intervene in the ongoing assault. At that time, because of threat extended by Suraj and Dhiraj by means of respective weapons in their hands, they could not intercept. His statement further shows that thereafter co-accused Ranjit Gawande assaulted by means of "*tocha*" and Vikram assaulted on the head of deceased by means of fire extinguisher.

10. Statements of Advocate Nitin Dhut as well as Advocate Nemade are also recorded. Statements of Advocate Nemade do not show name of the applicant however much importance cannot be given to said aspect because it is quite possible that Advocate Nemade may not be knowing the present applicant. However, Advocate Nitin Dhut's statement did show the name of applicant. But, his statement only corroborates the statement of first informant Pravin which was recorded by investigating officer on 07.05.2019. Thus even from the statement of Advocate Dhut, it is clear that applicant did not assault on deceased by means of chair. Statements of Rajesh Wankhade and Jayshan Ghuddhe also do not attribute the role of assault on deceased by the applicant.

11. Charge-sheet contains postmortem report. Column 17 of the said report shows that deceased suffered in all 10 injuries. The cause of death is head injury. In column 23 it is stated that injury nos.1, 3 and 4 mentioned in column no.17 with corresponding injuries mentioned in column no. 19(i), (ii) and (iii) are individually sufficient in ordinary course of nature to cause death and thus panel of Doctors who performed autopsy found the cause of death was head injury.

12. Injury nos. 1,3 and 4 in column no. 17 are as under:

“1) Depressed, lacerated, cavity deep injury, over right fronto-temporal area of size 8 cm x 5 cm extended up to right eye, eye ball sunken, red.

3) Laceration, cavity deep, over left temporal area of size 11 cm x 7 cm, red.

4) Laceration, over left occipito – temporal area of size 15 cm x 8 cm, with depression and extending to left ear pinna, red”

13. The weapons namely fire extinguisher, “tocha”, walking sticks, similarly broken pieces of chairs were sent to the medical officer by investigating officer seeking his opinion regarding whether the injuries caused, as noticed in the postmortem, can be caused by said weapons.

14. The weapon; fire extinguisher's query report is at page 142 of the charge-sheet. The panel of Doctors answered query by stating that injury nos. 1, 2, 3, 4, 6, 7 and corresponding internal injuries mentioned in column no. 19 (i), (ii) and (iii) are possible with the kind and type of weapons provided by the investigating officer i.e. fire extinguisher. Thus, injury nos. 1, 3 and 4 in column no.17, which according to postmortem report were never supposed to cause death, are caused due to assault made by means of fire extinguisher.

15. It is not the case of any of the prosecution witnesses that the applicant has used said weapon.

16. In view of the aforesaid, though the learned Additional Public Prosecutor is making submission that there is distinguishing factor in between the case of co-accused Pravin and Mayur and present applicant inasmuch as name of the said applicant did figure in the first information report. However, in my view, looking to the allegations made in the subsequent statement of Pravin i.e. on 07.05.2019 in which he specifically attributes the role of assault on Kisanrao by means of chair to co-accused Ranjit Gawande and Dhiraj Gawande, in my view, at least *prima facie*, general statement made by first informant in first information report that named eight accused persons along with four unnamed co-accused, loses its importance. Learned

Additional Public Prosecutor submits that the applicant being a member of unlawful assembly is guilty with the aid of Section 149 of the Indian Penal Code.

17. From the entire prosecution case, as it is disclosed in the charge-sheet, it is clear that none of the accused, when they approached in the office of Assistant Charity Commissioner, were armed with any weapons in their hands. The weapons, as per prosecution, which are used in commission of the offence are; (1) chair, (2) fire extinguisher and (3) *tocha*. All these articles were used as weapons were taken by the respective accused persons from the spot itself.

18. In that view of the matter, it is crystal clear that intention cannot be attributed to the present applicant, when he approached along with co-accused in the office. The unlawful assembly can give shape to the crime can be on the spot itself. However, for that it will have to be proved by the prosecution during the course of trial.

19. The applicant is not having any criminal antecedent at his discredit.

The investigation is over and charge-sheet is already filed.

20. From the factual discussion on the basis of the material available in the charge-sheet as done by me in forgoing paragraphs, I am of the opinion that the applicant need not continue his jail presence further. Resultantly, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant – Satish Sukhdeorao Tayade be released on bail in connection with Crime No. 225/2019 registered with Police Station, Civil Lines, Akola for the offence punishable under Sections 302, 143, 147, 148, 149, 201, 109, 323, 327 and 506 of the Indian Penal Code and Section 3 of the Prevention of Damage to Public Property Act, on he executing PR bond in the sum of Rs.50,000/- with two solvent sureties of the like amount.
- (iv) The applicant shall not enter into territorial jurisdiction of Akola Municipal Corporation during pendency of the trial except on the dates when the case will be fixed before the Court below.
- (v) The applicant is directed to furnish his address of residence before the learned Judge of the Court below before whom he will be furnishing his bail bonds.
- (vi) The learned Judge of the Court below before whom the bail bonds will be executed shall issue directions to the applicant that he shall attend police

station nearest to his residence twice in a week i.e. on Monday and Saturday during pendency of the trial.

(vii) The applicant shall not give any type of threat to any of the prosecution witnesses.

(viii) If it is noticed that applicant is committing breach of any of these conditions, it shall be open for the investigating officer to file an application for cancellation of bail.

(ix) The observations made in this order are purely *prima facie* in nature and those are made only for deciding this application. The learned Judge of the trial Court before whom trial will be conducted should not get himself influenced by it.

The application is disposed of.

JUDGE

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