

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.430 OF 2020

**ANANT BABURAO INGLE
-VERSUS-
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Shri Nilesh S. Ghanekar, Advocate for the appellant.
Shri S.G. Sangle, APP for respondent No.1/ State.
Shri P.K.Ippar, advocate for respondent No.2 (appointed)

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 08th October, 2020

Per Court :-

1 This is an appeal for regular bail, filed by accused No.13 in Crime No.106/2020 registered with the Yusufwadgaon Police Station, District Beed on 14.05.2020, which occurred on 13.05.2020 in between 09:00 pm to 10:30 pm. Three persons have been killed, allegedly by the accused persons.

2 We have heard the learned advocate for the appellant and the learned APP on behalf of the State for almost two hours and thirty minutes. We have gone through the voluminous record placed before us, with the assistance of the respective counsel. The charge sheet has already been filed in the Court on 10.07.2020 and the appellant has been behind

the bars since 17.05.2020. He is a teacher by profession.

3 Since the case is pending trial, we are not required to make any observation about the details of the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure, supplementary statements, the statements recorded under Section 164 of the Code of Criminal Procedure and the Test Identification Parade (T.I.P.) that has been conducted. Suffice it to say that, the Nimbalkar clan allegedly involved in this crime has been at loggerheads with the Pawar clan. It has been canvassed before us that the Nimbalkar clan belongs to the “Maratha” community and the Pawar clan belongs to the “Pardhi” community, which is a scheduled tribe. The civil litigation for more than one decade has been the root cause of the animosity and enmity between the two clans. The appellant herein is stated to be unrelated to either of the clan members as per the solemn statement made by the learned advocate for the appellant on specific instructions.

4 The Pawar clan has succeeded against the Nimbalkar clan in the civil litigation upto the first appeal level before the District Court. The parties are before this Court in Second Appeal No.111/2018. By an order dated 12.12.2018, this Court has recorded the statement made on behalf of the Pawar clan (the respondents in the Second Appeal) that they would maintain status-quo with regard to the possession of the suit land. We are informed that the Nimbalkar clan, though having failed in the civil

litigation upto to the first appeal level, is in possession of the suit land.

5 The First Information Report has been registered by Dhanraj Babu Pawar on 14.05.2020 wherein, it is clearly stated that, on 13.05.2020 at about 07:00 pm, the Pawar clan started it's journey in a tractor and two motorcycles towards the suit land. The persons, who were part of the traveling party, have been mentioned in paragraph 3 of the First Information Report. They traveled to the suit land and reached the place at about 09:00 pm. They were carrying their utensils and necessities with the intention of making an overnight halt in the suit land. After they had reached the destination and got down from their respective vehicles along with their necessities and utensils, they were said to have been attacked by Sachin Mohan Nimbalkar and Hanumant @ Pintu Mohan Nimbalkar accompanied by about 9 to 10 persons. In the said gruesome attack, the father of the complainant/ informant, Babu Shankar Pawar, the brothers of the complainant Prakash Pawar and Sanjay Pawar, got killed on account of the blows inflicted by the accused by swords and axes. The sister-in-law of the complainant (Daduli) suffered grievous injuries, but survived to narrate her horrific tale to the police. The details are set out in the FIR as to how the people, who have survived, started running helter-skelter in view of the sudden attack in the darkness of the night. The informant does not name the present appellant (Anant Baburao Ingle) in the First Information Report.

6 We have perused the supplementary statement of the informant recorded on the same day i.e. 14.05.2020 in which, he mentions the names of twelve persons specifically and adds that there were about four to five other persons, whose names were not known to him though he could identify them if they were brought before him. It is on these premises that the investigation was initiated.

7 Besides the first informant (Dhanraj Pawar), the statements of the injured victim Daduli Pawar, Shivaji Babu Pawar, Vilas Pawar, Geeta Pawar, Tai Pawar, Santosh Pawar, Suresh Pawar, Anita Pawar and Sunita Pawar were recorded by the police under Section 161 of the Code of Criminal Procedure. The supplementary statements and the statements under Section 164 of the Code of Criminal Procedure were also recorded. The appellant was subjected to the Test Identification Parade and most of these persons as named above, whose statements have been recorded, were permitted to participate in the Test Identification Parade.

8 We find it glaring that the following persons have not named the present appellant in any of their statements and have also not been able to identify the appellant in the T.I.P. :-

- (a) Dhanraj Pawar (first informant)
- (b) Daduli Pawar (surviving victim)
- (c) Vilas Pawar (not party to T.I.P. and is not an eyewitness)
- (d) Geeta Pawar

- (e) Tai Pawar
- (f) Anita Pawar and
- (g) Sunita Pawar (hearsay witness)

9 We find it appropriate to take note, at this prima facie stage, that the informant/ complainant and Daduli Pawar have not even uttered the name of the present appellant, much less narrated his involvement.

10 Shivaji Babu Pawar has not named the appellant in his original statement recorded on 17.05.2020, which is after four days of the incident. In his supplementary statement recorded on 22.05.2020, 09 days after the incident, he names the appellant by stating that he was also party to the attacking group. When his statement was recorded under Section 164 before the learned Magistrate on the very next day 23.05.2020, he does not name the appellant. He, however, identifies the appellant along with a dummy candidate at Sr.No.19, as being the accused person.

11 Santosh Pawar, a 17 year old boy, who is stated to be married, has named the appellant in his statement recorded under Section 161. The role allegedly played by the appellant is that he was along with the Nimbalkar clan while attacking the Pawar clan resulting in the death of three persons. In his supplementary statement, he reiterates his age being 17 years and states that his wife Geeta along with Tai Pawar had

ran away when his grandfather Babu Pawar had also tried to run away. He claims to have seen three murders with his own eyes and he does not narrate as to how he could rescue himself. He, however, enlarges the list from 05 assailants to 13 assailants in his supplementary statement and reiterates the name of the appellant. In his statement under Section 164 recorded before the learned Magistrate on 23.05.2020, he states that the assailants, who had actually murdered three persons, were Sachin Nimbalkar, Pintu, Dilip and Balasaheb. His last sentence is, the present appellant (Anant Ingle) was also with them. Surprisingly, in the T.I.P. he was unable to identify the appellant.

12 Insofar as Suresh Pawar is concerned, he uttered the name of the appellant for the first time in the supplementary statement and then he did not name the appellant in the statement recorded under Section 164. He also could not identify the appellant in the T.I.P..

13 The learned counsel for respondent No.2/ original informant has vehemently opposed this appeal. He has canvassed a host of reasons in his valiant attempt to convince us that this appeal deserves to be rejected. He, however, has no explanation as to why the name of the appellant was not mentioned in the complaint on 14.05.2020, supplementary statement of the informant and his statement under Section 164 before the learned Magistrate. The learned APP has also vehemently opposed this appeal and has supported the contentions raised

by the learned counsel for respondent No.2.

14 Considering the record available before us at a prima facie stage, we are restricting our observations only to the extent of whether, the appellant could be granted regular bail. We find that, though Section 149 of the Indian Penal Code is invoked, there is no narration of the appellant actually striking any person or using any weapon. It cannot be overlooked that since Section 149 has been invoked, the present appellant, if ultimately the offence of murder is proved against the accused, would have to suffer the same fate as those accused who may be convicted. For the present, we find from the statements of the informant (Dhanraj Pawar), the injured victim (Daduli Pawar) and Santosh Pawar (minor) that the first two have not even named the appellant and Santosh Pawar, though names the appellant, could not identify him in the T.I.P.. We refrain from making any further observations about these aspects since the trial is pending. We are, however, convinced that the continued detention of the appellant would not be necessary and since the charge sheet has been filed, there is no necessity to detain him behind the bars as the investigation is concluded.

15 Since we have scrutinized the appeal of the appellant (Anant Ingle) for regular bail, our observations and analysis of the record before us, are restricted only to the case of the present appellant. The Trial Court need not be influenced by any of the observations in this order.

16 In view of the above, this Criminal Appeal is allowed and the impugned order to the extent of the appellant is quashed and set aside under the following conditions :-

- (a) The appellant (Anant Baburao Ingle) shall be released on regular bail upon his furnishing a Personal Bond in the sum of Rs.1 lac along with a solvent surety of the like amount.
- (b) The appellant's statement that he would not enter the taluka Kaij and would restrict himself to the municipal limits of Beed city since he intends to reside in Ankush Nagar area within the jurisdiction of the Shivaji Nagar Police Station, Beed, is accepted.
- (c) As such, he shall mark his attendance on every Tuesday, Thursday and Saturday between 11:00 AM to 01:00 PM in the Shivaji Nagar Police Station, Beed and his attendance shall be recorded by the Station House Officer in the station diary and his signature would be obtained to evidence his attendance. The said attendance would continue till the end of the trial barring the dates on which he would have to remain present before the Trial Court. Whenever the occasion arises for the appellant to attend the trial by remaining present before the Trial Court at Ambajogai, he would be at liberty to travel from Kaij taluka and would be exempted from

marking his attendance at the Police Station.

- (d) The appellant shall surrender his Voter Identity Card issued by the Election Commission of India and the Adhar Card, to the Station House Officer, Shivaji Nagar Police Station, Beed. He shall also surrender his Passport, if any.
- (e) The appellant shall refrain from tampering with evidence or contacting any person or witness in connection with the Crime No.106/2020 in any manner whatsoever, directly or indirectly.
- (f) Violation of any of the above conditions would be a good ground for cancellation of bail.

17 Shri P.K.Ippar, learned advocate, was appointed by this Court to represent respondent No.2, who had not caused an appearance despite service of the court notice. We, therefore, quantify his fees at Rs.5000/- (Rupees Five Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad, to him.