

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

928 BAIL APPLICATION NO.1111 OF 2020

MAHESH S/O.CHANDRASHEKHAR MUNDHE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr.R.G.Hange, Advocate for the applicant.
Mr.S.P.Deshmukh, APP for the respondent-
State.
Mr.Mahesh Kale, Advocate for the informant.

...

**CORAM : V.L.ACHLIYA,J.
DATE : 05.11.2020**

P.C.

1] The applicant has moved this application u/s. 439 of the Criminal Procedure Code for release on bail Crime No. 365 of 2020 registered at Police Station Gangakhed, District Parbhani, for the offences punishable u/s. 302, 307, 324, 354-A, 504, 506, 143, 147, 148, 149 of the IPC and Section 135 of the Bombay Police Act and Section 4, 25 of the Arms Act.

2] Heard learned counsel for the applicant and learned APP for the respondent-State. Perused the first information report and papers of investigation.

3] Mr. Mahesh Kale, learned counsel for the informant submits that informant has instructed to appear and assist the prosecution.

4] In brief, it is the contention of the learned counsel for the applicant that if the allegations made in the First Information Report are considered and presumed to be correct still it made out no *prima facie* case to establish the complicity of the applicant in commission of offences. By referring the allegations made in the First information report, learned counsel submits that the name of the applicant is not mentioned in the first information report. The informant has alleged that in the incident accused Deepak Nagargoje assaulted him by means of *Koyta*. The co-accused Munjaji Nagargoje [accused no.2], Waman Nagargoje [accused no.3] and Murli Nagargoje [accused no.4] and two unknown persons accompanied with accused - Deepak. The names of the unknown persons as well as their identity not disclosed by informant nor the witnesses. It is further pointed out that role attributed to the unknown persons confines to instigate the

accused - Deepak to assault the informant. It is submitted that the case of the applicant stand *at par* with Dhanraj Dnyoba Phad, who has been granted bail by this Court [Coram : V.K.Jadhav, J.], vide order dated 19.10.2020 passed in Bail Application No. 1171 of 2020. Learned counsel submits that considering overall facts of the case, absence of name of the applicant in the first information report and absence of evidence to establish the complicity of the applicant in commission of the crime, the applicant deserves to be enlarged on bail on merit as well as on the ground of parity.

5] On the other hand, learned APP and counsel representing informant opposed the application with contention that investigation is in progress and charge sheet is yet to be filed. However, learned APP fairly conceded that in the first information report as well as statement of witnesses recorded, no one has named the applicant as a person present and participated in the incident.

6] I have considered the submissions advanced in the light of overall facts of the

case, the first information report lodged by the informant and the statement of the witnesses recorded during the course of investigation. The first information report in respect of the incident has been lodged by the Trimbak Maruti Mundhe, the victim who died on 12.08.2020 while taking treatment in Hospital. The informant has alleged that on 28.07.2020 at about 8.00 p.m. when he came out of his house to close the gate of his house, the accused no.1 Deepak Nagargoje came along with two unknown persons. He asked as to why his son Ravi talk to his sister and asked to make phone call to him. At that time accused Munjaji Nagargoje, Waman Nagargoje and Murli Nagargoje the accused nos.2 to 4 joined accused Deepak. When he told accused Deepak that his son has gone to Parbhani, he told that he asked him to make phone call to Ravi. When he told him that he will make call to him on next day morning and then talked to him, the accused no.1 Deepak assaulted by means of *Koyta* [i.e. sharp weapons used for cutting sugar cane]. The accused Munjaji assaulted by means of stick. When his two daughters came out of the house and tried to rescue him the accused Deepak and co-accused abused them and outraged their modesty.

Accused Deepak also assaulted his daughter Rajshree by means of *Koyta*. When his daughter Shubhangi went to rescue her, accused Deepak outraged her modesty. It is alleged that besides accused Deepak, Munjaji Nagargoje and Waman Nagargoje, two other unknown persons helping accused no.1 Deepak in assaulting and outraging the modesty of his two daughters. Pursuant to complaint lodged by the deceased informant, the offence punishable u/s. 307, 324, 354-A, 504, 506, 143, 147, 148, 149 of IPC and Section 135 of the Bombay Police Act and Section 4, 25 of the Arms Act, registered against Deepak Nagargoje, Munjaji Nagargoje, Waman Nagargoje and Murli Nagargoje and two unknown persons. The deceased informant succumbed to injuries and died on 12.08.2020 while undergoing treatment. After the death of informant, the offence u/s. 302 of IPC has been registered in the case.

7] The applicant came to be arrested on 21.08.2020 and interrogated. No recovery or incriminating evidence found against him.

8] It is apparent from the first information report and the statement of witnesses recorded during the course of

investigation none of the persons have named the present applicant as an accused involved in the case. No role has been attributed to the applicant in commission of the offence.

9] The prosecution has opposed the application on the ground that offences are grievous in nature and the applicant being close friends of accused Deepak.

10] The applicant has been arrested in the case without any *prima facie* evidence to establish his complicity to show his involvement in the commission of offence. The complaint has been lodged by none else than deceased Trimbak Mundhe, the victim who has given complete account of incident taken place on 28.07.2020. He has not named the applicant as person participated in commission of offence. There is no evidence to show that subsequent to registration of offence any information was revealed during the course of investigation showing involvement of the applicant in commission of offences. None of the witnesses have named the applicant as a person involved in commission of offence. No test identification parade appears to have been conducted to

ascertain the involvement of the applicant as one of the two unknown persons present with accused no.1 at the time of incident. Beside the deceased, two daughters of the deceased are claimed to be eye witnesses to incident and injured in the incident on account of assault made by accused no.1 and co-accused. The manner in which investigation has been conducted reflects sorry state of affairs on the part of the Investigating agency to conduct the investigation of crime involving offence u/s. 302 of the IPC.

11] The case of the applicant stand *at par* with Dhanraj Dnyoba Phad i.e. the applicant in Bail Application No.1171 of 2020, who has granted bail by this Court [Coram : V.K.Jadhav, J.] vide order dated 19th October, 2020. While passing the order, the Court has observed as under:

5. On going through the allegations made in the complaint and on perusal of the investigation papers, it appears that name of the applicant is not mentioned in the First Information Report nor it is revealed during the course of investigation through any witness. Though there is a

reference to "2 unknown persons" in the complaint, however, no specific role has been ascribed to those two unknown persons and the allegations have been made mainly against Deepak Nagargoje and Munjaji Nagargoje. There are no antecedents. In view of the same, I am inclined to grant bail to the applicant on certain conditions.

12] The case of applicant stand *at par* with the applicant in Bail Application No.1171 of 2020 and he is entitled to be released on the ground of parity. In absence of *prima facie* evidence to establish the complicity of the applicant in commission of offence, I am of the view that the applicant deserves to be released on bail. Accordingly, the application is allowed. Hence the following order:

ORDER

i] Applicant – Mahesh Chandrashekhar Mundhe arrested in connection with the Crime No. 365 of 2020 registered at Police Station Gangakhed, District Parbhani, for the offences punishable u/s. 302, 307, 324, 354-A, 504, 506, 143, 147, 148, 149 of the

IPC and Section 135 of the Bombay Police Act and Section 4, 25 of the Arms Act be released on his furnishing bail in the sum of Rs.20,000/- with one or two sureties in the like amount on following conditions:

- a] The applicant shall appear before the Investigating Officer as and when directed by the Investigating Officer.
- b] The applicant shall not indulge into any act amounting to tampering or pressurizing the prosecution witnesses.
- c] The applicant shall attend the Police Station once in a week on every Sunday at 8.00 a.m. to 11.00 a.m. till filing of the charge-sheet in the case.
- d] The applicant shall make himself available as and when required by the Investigating Officer for further investigation.

ii] The application is disposed of in above terms.

iii] It is clarified that the observations made in the order are made for limited purpose of deciding the present application. None of the observations made

be treated as observations made as to the merit of the case of prosecution against the applicant.

[V.L.ACHLIYA]
JUDGE

DDC