

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

BAIL APPLICATION NO.1365 OF 2020

01 Ganesh Bhanudas Teple
02 Shivhari s/o Namdeo Teple Applicants

Versus

The State of Maharashtra Respondent

Mr.N.S.Ghanekar, advocate for the applicants.
Mr.S.B.Narwade, APP for the Respondent.

**WITH
CRIMINAL APPLICATION NO.2121 OF 2020 IN
BAIL APPLICATION NO.1365 OF 2020**

Ashok Tejrao Teple Applicant

Versus

The State of Maharashtra & others Respondents

Mr. Swapnil Joshi, advocate, i/by J.P.Legal Associates for the applicant.
Mr.S.B.Narwade, A.P.P. for Respondent No.1.
Mr.N.S.Ghanekar, advocate for Respondents No.2 & 3.

CORAM : V.K.JADHAV, J.

DATE : 14th December, 2020.

PC :

1 For the reasons stated in Criminal Application No.2121/2020, the prayer of the applicant for intervention and to assist the learned Public Prosecutor is allowed and this application is accordingly disposed of.

2 I have heard learned Counsel for the applicants for some time.

3 The learned Counsel for applicants, on instructions seeks leave to withdraw the application in respect of applicant no.1 - Ganesh Bhanudas Teple.

4 Leave granted. Application of applicant no.1 - Ganesh Bhanudas Theple is disposed of as withdrawn.

5 The applicant no.2 - Shivhari Namdeo Teple is seeking bail in connection with Crime No.82/2020, registered with Hasnabad Police Station, District Jalna, for the offences punishable under Sections 302, 307, 326, 325, 324, 323, 147, 148, 149 and 504 of the Indian Penal Code.

6 Heard both sides.

7 The learned Counsel for the applicants submits that though the name of applicant no.2 - Shivhari Namdeo Temple is mentioned in the First Information Report with a specific role ascribed to him, however, in respect of the incident occurred on the same date, time and place, co-accused Bhanudas Teple lodged complaint against the informant and five others, which is earlier in time, being Crime No.81/2020, for the offences punishable under Sections 326, 324, 143,

147, 148, 149, 504 and 506 of the Indian Penal Code. There is a dispute in respect of common way leading to the agricultural land. It appears that there was almost a free fight between the two groups and as a result thereof, both the groups have lodged complaints against each other. The learned Counsel submits that in view of the same, their individual acts are required to be considered.

8 So far as applicant no.2 - Shivhari is concerned, in the First Information Report, allegations have been made to the effect that applicant no.2 - Shivhari has assaulted deceased Suresh with the help of wooden log and caused injuries on the back portion of his body and abdomen. The learned Counsel submits that in the police statements, eye witnesses - Gajara, Tejrao and Suman have alleged that the present applicant - Shivhari has used wooden log in the assault and caused injury on the back of the deceased. However, witness Ranjana, in her police statement, has alleged that the present applicant has used iron rod and caused injury on the head of the deceased with the help of it. The learned Counsel submits that in the statement of eye witness Ranjana, recorded under Section 164 of the Criminal Procedure Code, before the Magistrate, though she stick up to her police statement, however, the other eye witnesses have simply stated in their respective statements that the present applicant no.2 - Shivhari has used iron rod in assaulting deceased Suresh. The learned Counsel submits that as per the *post mortem* notes, there is only one injury, that is in the form of contusion on the head of the deceased and same

is the cause of his death. The second injury, as mentioned in column no.17, is the contusion on abdomen. However, there are no further corresponding internal injuries so far as said second injury is concerned.

9 The learned Counsel submits that the allegations have been made mainly against co-accused Ganesh, whose application, seeking bail, came to be withdrawn today. There is no criminal history. Applicant Shivhari is an agriculturist by occupation. He is detained in jail for a considerable period in connection with the present crime. The applicant is easily available for trial. He is ready to furnish surety. Applicant is also ready to abide by the conditions, that may be imposed by this Court, while releasing the applicant on bail.

10 The learned A.P.P. has strongly resisted the application on the ground that the name of applicant no.2 – Shivhari is mentioned in the First Information Report with the specific role ascribed to him. The learned A.P.P. submits that *prima facie*, there is evidence about formation of unlawful assembly and in prosecution of common object, all the accused persons, including applicant Shivhari, entered the house of the informant, assaulted informant and others with deadly weapons and in the said assault, deceased Suresh was seriously injured and succumbed to the injuries while under treatment in the hospital and other injured persons sustained grievous injuries. The learned A.P.P. submits that *prima facie* there is a strong case against applicant – Shivhari. There is also possibility of tampering with the

prosecution evidence if the applicant – Shivhari is released on bail. He submits that after co-accused Namdeo is released on bail by the Sessions Court, the said accused has threatened the informant and eye witnesses and in consequence thereof, N.C. came to be registered against him in the concerned police station. The learned A.P.P. submits that the informant has also moved an application for cancellation of bail granted to said accused Namdeo and the said application, seeking cancellation of bail, is pending before this Court. He submits that the applicant, therefore, may not be released on bail.

11 On going through the allegations made in the complaint and on perusal of the investigation papers, it appears that in respect of the incident occurred on the same date, time and place, both the groups have lodged complaints against each other. It appears that there was almost a free fight between the members of the rival groups. On the basis of the complaint lodged by co-accused Bhanudas, which is earlier in time, Crime No.81/2020, for the offences punishable under Sections 325, 324, 149, 504 and 506 of the Indian Penal Code, came to be registered against the informant and five others in the concerned police station. There is dispute on account of common way leading to the agricultural land. Thus, considering the *prima facie* evidence as regards free fight between the members of the two groups, their individual acts are required to be considered.

12 So far as present applicant no.2 Shivhari is concerned, there are inconsistent allegations against him. Though, in the First Information Report, a specific role is attributed to the present applicant to the effect that he has extended beating to deceased Suresh with the help of wooden log on the back portion of his body and abdomen and other eye witnesses, in their respective police statements, have specifically ascribed role to the applicant Shivhari about causing injury with the help of wooden log on the back of deceased Suresh, however, witness Ranjana has stated in her police statement that present applicant Shivhari has used iron rod and caused injury on the head of the deceased. It is to be mentioned here that deceased had no injury on the back portion of his body. Further, there is only one head injury in the form of contusion with corresponding internal injury and the same is specifically attributed to co-accused Ganesh, whose application seeking regular bail, came to be withdrawn today. It further appears from the statement of eye witness Ranjana, recorded under Section 164 of the Criminal Procedure Code, before the Magistrate, that she has ascribed specific role to the present applicant about causing injury to deceased Suresh with the help of iron rod. However, other witnesses, in their respective statements, recorded under Section 164 of the Criminal Procedure Code, have simply stated that the present applicant has used wooden log without specifying as to on which part of the body of the deceased, applicant Shivhari has inflicted the injury. There was almost a free fight between the members of the two groups. There is a dispute in respect of common way leading to

the agricultural land. Thus, possibility of implicating each and every member from the rival group, cannot be ruled out. There is no criminal history. Furthermore, in order to avoid tampering with the prosecution evidence, it would be just and proper to restrain entry of the applicant in the village till conclusion of the trial. Thus, considering the entire aspects of the case, I am inclined to release the applicant on bail with certain conditions.

13 Hence, the following order:

(i) Application is partly allowed.

(ii) The applicant no.2 - Shivhari Namdeo Teple is seeking bail in connection with Crime No.82/2020, registered with Hasnabad Police Station, District Jalna, for the offences punishable under Sections 302, 307, 326, 325, 324, 323, 147, 148, 149 and 504 of the Indian Penal Code, be released on bail on his furnishing Personal Bond of Rs.20,000/- (Rs.Twenty Thousand) with one solvent surety of the like amount, on the following conditions:

(a) The applicant no.2 - Shivhari Namdeo Teple shall not tamper with the prosecution evidence, in any manner.

(b) The applicant no.2 – Shivhari Namdeo Teple shall not enter the limits of village Chandai Teple, Tq.Bhokardan, District Jalna, till conclusion of the trial.

14 The application is accordingly disposed of.

(V.K.JADHAV)
JUDGE

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