

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1431 OF 2020

Bibhishan s/o Raosaheb Solunke

...Applicant

versus

The State of Maharashtra

...Respondent

.....
Mr. Vibhute Vinod M. Advocate for Applicant
Mr. A. A. Jagatkar, APP for Respondent-State

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CORAM : V. K. JADHAV, J.
DATED : 15th DECEMBER, 2020

PER COURT:-

1. The applicant is seeking bail in connection with crime No. 126 of 2020 registered with Kasarshirshi police station, District Latur for the offences punishable under Sections 302, 326, 324, 323, 506, 337, 143, 147, 148, 149 of I.P.C. and under Section 135 of the Maharashtra Police Act. His Bail application Exh. 28 in Sessions Case No. 14 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Nilanga vide order dated 07.11.2020.

2. Brief facts giving rise to the present bail application are as under:-

3. On the basis of the complaint lodged by one Shatrughna Patil dated 24.5.2020 the aforesaid crime came to be registered. On

23.5.2020 at about 1.00 p.m., co-accused Vidyaman Tatyarao Barmade came to village Bolegaon from the State of Uttar Pradesh in a truck. There was outbreak of COVID-19 and therefore, the informant, the President of Litigation Free Village viz. Prakash Mane and other villagers requested co-accused Vidyaman Barmade to stay away from the village for a certain period. However, said co-accused Vidyaman Barmade alongwith his relatives refused to accept the said suggestion and further threatened the informant and other villagers to do whatever they want. On 24.5.2020 at about 2.30 a.m., the informant, his cousin and other family members woke up due to pelting of stones. Co-accused Vidyaman Tatyarao Barmade stabbed the father of the informant on his chest. Co-accused Bharat Solanke stabbed the cousin of the informant viz. Vaibhav on his abdomen. It has been alleged that the other co-accused persons including the applicant extended beating to the informant, injured Bharat Shahaji Patil, Sagar Shahaji Patil and Shridhar Chandar Patil with the help of iron rod. In consequence of the said beating, two persons viz. Vaibhav Patil and Shahaji Kisan Patil sustained serious injuries and died subsequently. It is with these contentions the aforesaid F.I.R. came to be filed.

4. Learned counsel for the applicant submits that though the name of the applicant is mentioned in the F.I.R., however, general allegations have been made against him and no specific role has been attributed. Learned counsel submits that the allegations have

been made mainly against co-accused Vidyaman Barmade and Bharat Patil. Learned counsel submits that on the same set of allegations, this Court has released co-accused Datta Mane and Ganesh Mane by order dated 24.9.2020 in bail application No. 1049 of 2020. There is no criminal history. The applicant is the sole earning member of his family. The applicant is having roots in the society. He is available for trial. The applicant is ready to abide the conditions, if any, imposed by this Court while enlarging him on bail. The applicant may be released on bail.

5. Learned A.P.P. has strongly resisted the application on the ground that the incident had taken place in the night between 23.5.2020 and 24.5.2020 at about 2.30 a.m. and immediately in the morning at about 6.47 a.m., the complaint came to be lodged. It is a case of double murder. The incident, as alleged in the complaint and as revealed during the course of investigation, had taken place in front of the house of deceased. Learned A.P.P. submits that since the informant and other villagers objected the entry of co-accused Vidyaman Barmade in the village because of the outbreak of COVID-19 as co-accused Vidyaman Barmade had come to the village from the State of Uttar Pradesh in the wee hours, the applicant and co-accused persons formed an unlawful assembly and assaulted the deceased persons and other family members, including the informant, at their house. *Prima facie*, there is evidence about formation of an unlawful assembly. Learned A.P.P. submits that the

medico legal certificates of the injured witnesses support the allegations made against the present applicant. The applicant may not be released on bail.

6. On going through the allegations made in the complaint and on perusal of the charge sheet, *prima facie* there is evidence about formation of an unlawful assembly. It appears that there were three incidents right from 3.00 p.m. on 23.5.2020 till the night between 24.5.2020 to 25.5.2020 at about 2.30 a.m. It has been revealed during the course of investigation that the applicant has used the weapon hunter in the assault. There are injuries on the body of both the deceased persons, some of which are elliptical wounds. *Prima facie*, there is evidence about formation of an unlawful assembly. Furthermore, there are injuries on the person of the eye witness Bharat Shahaji Patil and one injury is on the shoulder caused by hunter. There are two injuries on his persons in the form of abrasions and contusion and both the injuries are caused by hunter. Even witness Shridhar Patil has also sustained four external injuries on his person, out of which two injuries have been caused by hard and blunt object. It appears that the applicant was not a mere spectator, however, he was armed with weapon and used that weapon in the assault. Thus, considering the overt act on the part of the applicant, *prima facie* inference could be drawn that he had actually participated in the commission of crime. In view of the same and also considering the constructive liability as per Section 149 of I.P.C., the

applicant, in the light of the overt act as discussed above, is also liable for the act of the co-accused persons.

7. So far as the other two co-accused persons to whom this Court has granted bail are concerned, in para No.4 of the said order dated 24.9.2020, it has been specifically observed that though their names are mentioned in the F.I.R., no specific role has been attributed to them in the F.I.R. Even the injured eye witnesses and independent eye witnesses have not stated about their presence at the time of the main incident. In view of the same, this Court has observed that it is doubtful as to whether those applicants were members of the unlawful assembly at the time of the main incident. In the instant case, the facts are altogether different as discussed above and therefore, the principle of party is not attracted. I am not inclined to release the applicant on bail. Hence the following order:-

O R D E R

Application is hereby rejected.

8. It is made clear that the observations made in this order are *prima facie* in nature and the trial court shall not get influenced by the same.

(V. K. JADHAV, J.)