

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.101 OF 2016

BHASKAR SUBHASH GURUDE)...APPLICANT

V/s.

PANDURANG BHAGWAT GUTAAL AND ORS.)...RESPONDENTS

Mr.Swaroop Karade h/f. Mr.Surel Shah, Advocate for the Applicant.

Mr.Rupesh Zade, Advocate for Respondent Nos.1 and 2.

Mr.R.M.Pethe, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 28th JANUARY 2020

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 By this application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake

of brevity) the applicant/First Informant/injured victim of the crime in question, is praying for quashing and setting aside the order dated 6th January 2016 passed by the learned Additional Sessions Judge, Baramati, granting anticipatory bail to respondent nos.1 and 2 in Crime No.377 of 2015 registered with Indapur Police Station for offences punishable under Sections 307, 504, 506 read with 34 of the Indian Penal Code by allowing Criminal Bail Application No.1886 of 2015.

3 Heard the learned counsel appearing for the applicant/First Informant/victim of the crime in question. He argued that the impugned order granting anticipatory bail in the subject matter is totally perverse, and therefore, required to be quashed and set aside.

4 As against this, the learned counsel appearing for respondent nos.1 and 2 took me through the First Information Report (FIR) lodged by applicant Bhaskar Gurude on 21st December 2015 and argued that though according to the

prosecution case, there are two eye witnesses to the incident in question, both of them have not uttered a single word regarding the fact that respondents/accused persons were armed with wooden stumps. He further argued that Injury Certificate of Yashodeep Hospital shows that the case was that of road traffic accident. Therefore, in submission of the learned counsel for respondent nos.1 and 2, the impugned order is perfectly legal and correct.

5 I have also heard the learned APP.

6 By resorting to provisions of Section 482 of the Cr.P.C., the applicant herein/ First Informant is praying for quashing and setting aside the order granting anticipatory bail to respondent nos.1 and 2. It is well settled that if order granting bail is perverse or irrelevant considerations were taken into account while granting bail, then such order can be annulled by the superior court. Similarly, if relevant considerations such as nature of accusation, severity of punishment, nature of supporting evidence

etc. are not kept in mind while granting bail, then such order can be set aside by the superior court.

7 In the case in hand, injured/ First Informant Bhaskar Gurude, on 21st December 2015, being admitted at the Yashodeep Hospital, had lodged the FIR. In his FIR, he has averred about his inimical relations with respondent nos.1 and 2 herein. So far as the incident in question is concerned, injured/ First Informant reported that after attending marriage at Indapur, at about 4.30 p.m., he left for his village on his motorcycle. As per his version, when he reached near “Babhulgaon Pati” he saw a Indica Car bearing Registration No.MH-42-K-1483 parked on the road. As per version of the First Informant, both respondents alighted from that car and chased him while they were armed with wooden stumps. The First Informant further reported that he managed to escape by riding his motorcycle in fast speed. However, after he travelled some distance, that Indica car, which was chasing him, gave a severe dash to his motorcycle, causing his fall. The First Informant further reported that then respondent Pandurang

Gutaal alighted from the Indica car and shouted that the First Informant should be killed by pelting stones on his head. He further reported that at the very same time, Dada Sahebrao Bhosale and Ajit Devidas Khabale were coming from Indapur, and as they came near the spot, accused persons namely Pandurang Gutaal and Mohan Kadam left the spot by Indica car. The FIR further reveals that the First Informant fell unconscious on the spot and he regained consciousness at the Yashodeep Hospital.

8 Statement of Ajit Khabale and Dada Sahebrao Bhosale were recorded on the very next day of lodging the FIR. Both of them unanimously stated that motorcycle of First Informant Bhaskar Gurude was being chased by the Indica car bearing Registration No.MH-42-K-1483 and that Indica car gave dash to the motorcycle of First Informant Bhaskar Gurude. Both of them further stated that then Pandurang Gutaal and Mohan Kadam alighted from the Indica car. Pandurang Gutaal was having stone in his hand and he was attempting to hit First Informant Bhaskar Gurude who was lying on the heap of rubble. As per version of

both these witnesses, upon seeing them approaching the spot of incident, respondents Pandurang Gutaal and Mohan Kadam fled from the spot of incident by Indica car.

9 Medico Legal Certificate given by Yashodeep Hospital shows that First Informant Bhaskar Gurude had severe fracture injuries to his spinal cord. There were other injuries in the nature of contused lacerated wounds, lacerations and contusions. No doubt, the Injury Certificate mentions about history of road traffic accident but that history was not given by the First Informant as the FIR itself shows that the First Informant was unconscious, when he was taken and admitted to the hospital. It appears that subsequently, he was treated at Krushna Hospital and Research Center and certificate of that hospital also shows that the First Informant had suffered multiple fractures in the incident.

10 On this backdrop, the learned Additional Sessions Judge was pleased to grant anticipatory bail to both respondents with reason that none of the eye witnesses has stated that accused

persons were armed with wooden stumps. The second reason stated is to the effect that though the First Informant has stated in his FIR that Pandurang Gutaal was shouting that the First Informant be killed and he should not be spared, this fact is not deposed by Dada Sahebrao Bhosale and Ajit Khabale. Both these reasons are totally perverse. The FIR shows that the incident of chasing the victim by accused persons while armed with wooden stumps, took place much earlier to the incident of giving dash to him. At that point of time, these two witnesses namely Dada Sahebrao Bhosale and Ajit Khabale were not on the spot. Similarly, First Informant has stated about shouting of accused Pandurang Gutaal soon after the incident of dashing him whereas witnesses Dada Sahebrao Bhosale and Ajit Khabale had reached on the spot after some time. Both of them have stated about the fact that accused Pandurang Gutaal was attempting to hit the First Informant by stone which was in his hand. Therefore, non-hearing of shouting of the First Informant by these two witnesses is of no assistance to discard version of these two eye witnesses

and that too, at the pre-trial stage, while deciding the matter for anticipatory bail.

11 Offences alleged against respondent nos.1 and 2 are serious. There is evidence in support of offences alleged against respondents/accused persons. The First Informant had suffered severe fracture injuries to his spinal cord in the incident. In this view of the matter, the learned Additional Sessions Judge ought not to have released respondents/accused persons on anticipatory bail with perverse reasoning. Therefore, the order :

ORDER

- i) The application is allowed.
- ii) The impugned order dated 6th January 2016 passed by the learned Additional Sessions Judge, Baramati in Criminal Bail Application No.886 of 2015 is quashed and set aside.
- iii) Rule is discharged.

(A. M. BADAR, J.)

Arti V.
Khatate

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