

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.182 OF 2020

(Pravin s/o Panjab Sautkar and others Vs. State of Maharashtra thr. PSO PS
Murtizapur, Tq. Murtizapur, Dist. Akola)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.*

Court's or Judge's orders.

 Shri Anil Mardikar, Senior Counsel with Shri S.V. Sirpurkar, Advocate for
 Applicants.
 Shri S.M. Ghodeswar, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 23rd MARCH, 2020.

Heard Shri Anil Mardikar, the learned Senior Counsel with learned Counsel Shri S.V. Sirpurkar for the applicants and the learned APP Shri S.M. Ghodeswar, who is assisted by the learned Counsel Shri A.M. Tirukh.

2] The applicants are charge-sheeted for offence punishable under Sections 147, 148, 149, 324, 302 and 341 of the Indian Penal Code in connection with Crime 172/2019 registered with the Mana Police Station, Tahsil Murtizapur, District Akola. Applicants 2 to 4 are in custody since 29.09.2019 and applicant 1 Pravin Sautkar was arrested on 01.10.2019. Applicants 2 to 4 were earlier charged with offence punishable under Sections 147, 148, 149, 324 and 341 of the IPC, and were released on bail by the learned Magistrate on 26.09.2019. However, in view of the death of the injured informant on 27.09.2019 applicants

2 to 4 were additionally charged under Section 302 of the IPC, the bail was cancelled by the learned Magistrate, and the applicants 2 to 4 were arrested.

3] The first information report is lodged by Digambar Mahadev Sautkar, who ultimately succumbed on 27.09.2019. The gist of the first information report lodged on 25.09.2019 is that while the informant was proceeding to Dhamori from Murtizapur, the accused intercepted his motorcycle and launched an assault with sticks in which the informant suffered injuries on arms, legs and back.

4] The statement of the informant was thereafter recorded in the hospital. In the said statement dated 26.09.2019, the informant has implicated applicant 1 Pravin Sautkar, who was not named in the first information report. The statement dated 26.09.2019 is more elaborate and in addition to assault the injured attributes to the accused theft of amount of Rs.40,000/- and mobile. It is further alleged that a machine used in the fair price shop (probably a weighing machine) was damaged by the accused. However, in so far as the assault is concerned, the version of the injured is broadly consistent with the version in the first information report which is that the informant was assaulted on both arms, legs and on the back.

5] The informant succumbed at 05:00 a.m. on 27.09.2019 while undergoing treatment. The death summary records that the informant suffered cardiac arrest

at 04:35 a.m. The cardiac arrest was preceded by renal failure. The death summary further records that in view of the renal failure dialysis was suggested which could not be completed due to fall in blood pressure. The postmortem report records acute renal failure as a complication of multiple injuries following assault as the cause of death. Perusal of the postmortem report reveals two contused abrasions on the left and right side of forehead and one contusion present over right half of lower lip. The rest of the injuries are on the upper and lower limbs and the back.

6] The learned Senior Counsel Shri Anil Mardikar would submit that the fact that only wooden sticks were used in the assault and the blows were aimed not at any vital part of the body *per se* but on the arms, legs and the back would rule out, *prima facie*, the commission of offence under Section 302 of the IPC. This submission is without prejudice to the submission that considering that the accused has indulged in exaggeration and over implication, the contents of the report and the statement subsequently recorded will have to be taken with a pinch of salt. Shri Anil Mardikar, the learned Senior Counsel would submit that even if the prosecution version is accepted in toto, it cannot be said that the assault was with the intention of causing death or with the intention of causing such bodily injury as the applicants knew to be likely to cause death. The further submission is that there was no intention of causing bodily injury sufficient to cause death in the ordinary course of nature. Shri Anil Mardikar, the learned Senior Counsel

would emphasize that even according to the postmortem report the renal failure is a complication of the injury suffered in the assault. Assuming, that the renal failure is a complication, considering that the blows were aimed at arms, legs and back, by no stretch of imagination can it be held, *prima facie*, that the applicants intended to inflict a bodily injury sufficient in the ordinary course of nature to cause death.

7] Shri Anil Mardikar, the learned Senior Counsel would submit that the applicants do not have any adverse antecedents and do not pose a flight risk. Shri Anil Mardikar, the learned Senior Counsel would submit that the normal rule that unless the accused is not likely to be available to face the trial, bail should be granted, particularly if *prima facie* offence punishable with death or imprisonment for life is not made out, should be followed. Shri Anil Mardikar, the learned Senior Counsel would submit that the applicants are ready to abide by such conditions as this Court deems fit to impose.

8] The application is vehemently opposed by the learned APP Shri Ghodeswar. The learned APP Shri Ghodeswar would submit that the assault is too brutal for the applicants to deserve bail. The learned APP Shri Ghodeswar would submit that ultimately whether the accused intended to cause death or to cause such bodily injury as would result in death is a matter to be looked into after the evidence is recorded. The learned APP Shri

Ghodeswar would point out that along with the application for permission to assist the prosecution, copy of a representation is filed which is signed by as many as 105 villagers including the family members of the deceased in which a categorical assertion is made that the relatives of the accused are openly claiming that the accused would again lord over the village once released on bail and that any opposition shall meet a fate similar to the deceased Digambar. In rebuttal, Shri Anil Mardikar, the learned Senior Counsel would submit that the deceased was the Sarpanch of the village and even according to the prosecution the assault is a fall out of political rivalry. No specific instance of threat or intimidation is mentioned and at any rate the representation contains omnibus statements which attribute some rhetoric, not to the accused but to their relatives. Shri Anil Mardikar, the learned Senior Counsel would submit that in any event the apprehension of the prosecution can be allayed if the applicants are directed not to enter the territorial limits of Tahsil Murtizapur.

9] It would not be appropriate to make any decisive observation on the rival contentions as regards the nature of the offence. However, even while considering an application for bail, brief reasons will have to be recorded which would throw light on the thought process underlying the decision. The first information report which is lodged on 25.09.2019 by the victim attributes assault to seven persons including applicants 2 to 4. Applicant 1 Pravin is named in the subsequent statement recorded on 26.09.2019. Both, the

first information report and the statement recorded subsequently, are consistent on the nature of the assault. Even according to the informant, who unfortunately succumbed while undergoing treatment, the body parts which were targeted were the arms, legs and back. Considering that the wooden sticks were used and non vital organs were targeted, *prima facie*, it is difficult to attribute intention to kill or intention to cause an injury which would result in death. The next question which will have to be addressed is whether the offenders intended to cause bodily injury which is sufficient in the ordinary course of nature to cause death. Again, *prima facie*, it is difficult to hold that the accused intended to cause an injury which would result in death in the ordinary course of nature. In this view of the matter, it would be debatable whether an offence punishable with death or life imprisonment is *prima facie* made out.

10] The apprehension of the prosecution that if the accused are released on bail they would run riot in the village or that the accused would threaten and intimidate the witnesses or otherwise would interfere with the course of the trial, can be allayed by imposing stringent conditions. This Court notes that the representation by the villagers levels omnibus allegations attributing bravado and rhetoric to the relatives of the accused and that at this stage, there is no material to suggest that the accused are likely to abuse the liberty. In any event, if the accused venture to do so, it would always be open for the prosecution or the

complainant to take appropriate action for seeking cancellation of bail.

11] This Court is satisfied that the applicants have made out case for bail.

12] The applicants shall be released from custody subject to the following conditions:

[a] The applicants shall be released on bail on furnishing personal bond of Rs.20,000/- each with a solvent surety of like amount.

[b] The applicants shall not enter the territorial limits of Tahsil Murtizapur, District Akola unless specifically permitted by the jurisdictional Court.

[c] The applicants shall not make any attempt to influence the witnesses or to influence the course of the trial.

[d] The applicants shall give their phone numbers and details of residence etc. to the Mana Police Station, within 72 hours of release.

[e] The applicants shall report at the Police Station within the territorial jurisdiction of which the applicant shall be residing once in month on the first Monday from 11:00

a.m. to 01:00 p.m.

Hamdast granted.

JUDGE

NSN