

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

CRIMINAL APPLICATION [BA] NO. 321/2020.

Mohammad Sabir Abdul Khalil

-VERSUS-

The State of Maharashtra

CRIMINAL APPLICATION [BA] NO. 322/2020.

Pravin @ Munna Shriram Gawande

-VERSUS-

The State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.P. Dharmadhikari, Senior Advocate with Shri C.S. Dharmadhikari, Advocate for Applicants.

Shri M.K. Pathan and Shri N.S. Rao, A.P.Ps. for the Non-applicant- State.

Shri N.R. Saboo, Advocate for Informant.

CORAM : VINAY JOSHI, J.

DATE : JULY 23, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Both applications are arising out of Crime No.225/2019 registered with Civil Lines Police Station, Akola relating to offence punishable under Sections 302, 143, 147, 148, 149, 201, 109, 323 and 506 of the Indian Penal Code and under Section 3 of the

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Prevention of Damage to Public Property Act, 1984. To be specific one Mohd. Sabir is seeking bail in Criminal Application No.321/2020, whilst Pravin Gawande seeks bail in Criminal Application No.322/2020.

3. Heard Shri S.P. Dharmadhikari, learned Senior Counsel for applicants, Shri M.K. Pathan and Shri N.S. Rao, A.P.Ps for non-applicant State and Shri N.R. Saboo, learned Counsel for the informant. Both applicants are seeking bail on various grounds like innocence, false implication, inadequacy of evidence, having permanent place of residence, ready to abide by conditions etc. Besides, that bail is also claimed on the ground of parity.

4. The learned Senior Counsel took me through the initial statement and supplementary statement of the informant to impress that besides a general statement, no more role is attributed to these applicants. He also invited my attention to the statement of one Advocate Dhoot and few other witnesses to state that none of the witnesses have stated any role played by applicants in the alleged

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incident.

5. As against this, learned A.P.Ps, appearing for State would submit that the incident is very severe as applicants along with co-accused barged into the public office i.e. in the office of the Charity Commissioner and brutally murdered one Kisanrao Hundiwale. At relevant time the assailants have caused bleeding injuries to the victim by means of hard and pointed articles and done him to death. It is submitted that applicants were members of unlawful assembly, therefore, due to application of Section 149 of the Indian Penal Code, they are liable for same treatment like the actual assailants.

6. Learned counsel for the informant in response has reiterated the contentions raised by learned A.P.P. In addition, he has pointed out some previous bail orders to impress that already this Court has refused to grant bail to some of them, while some have withdrawn the bail applications. He has also addressed on the point that both applicants were absconding since long. Moreover the applicant Sabir was arrested from Karnataka State. According to him,

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this fact itself demonstrates that if the applicants are released on bail, they may not be available for trial.

7. Besides usual grounds, the bail is mainly claimed on two counts i.e. on merits as well as parity. The learned Senior Counsel has straneously argued that the role attributed to applicants is merely presence on the spot and nothing else. To be precise, neither of the applicant has assaulted the deceased by means of any weapon or article. On the ground of parity, it is argued that some of the co-accused whose names were not mentioned in the FIR and one of the co-accused namely Satish Tayade, whose name was mentioned in FIR was released on bail by this Court.

8. As regards to submission on merits, it is necessary to appraise in brief the facts of the prosecution case. At the instance of FIR dated 06.05.2019, lodged by son of the victim namely Pravin, a crime came to be registered against several persons. As per report there was a dispute between two groups for having control over an educational institution. The dispute was pending in the Court of Assistant Charity Commissioner. On 06.05.2019, the

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informant Pravin along with his father Kisanrao [deceased] and one Suraj Andhare went to the office of the Assistant Charity Commissioner and were discussing the matter with Advocate Nitin Dhoot. At that time, 9 named persons accompanied by 4 to 5 unknown persons arrived in the office and suddenly started assaulting deceased Kisanrao.

9. The informant specifically stated that co-accused Vikram @ Chotu took out fire extinguisher and assaulted on the head of the deceased Kisanrao. Another co-accused Ranjit started assaulting Kisanrao by means of a pocker (tocha). Moreover, he stated that all the named accused including applicants assaulted deceased by means of wooden chairs.

10. No doubt, the role attributed to applicant Pravin and Sabir is of assault by chairs, however, the same is a general statement against so many assailants. The learned Senior Counsel took me through another detailed statement of informant Pravin, recorded on the following day. In the said detailed statement, Pravin stated about the threats given by the co-accused Shriram to the deceased on the earlier day of the

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incident. This time he has again stated the entire manner of assault made by several accused. In this statement he particularly stated that no sooner the assailants arrived, co-accused Ranjit and Dhiraj hit the deceased by wooden chairs at his head. Similarly he stated that Vikram @ Chotu made assault by fire extinguisher, whilst Ranjit repeatedly pierced tocha on the person of the deceased. Moreover, he has stated that another co-accused Suraj dealt blows on the head of the deceased by iron crunches (kubdi). It is his statement that co-accused Satish Tayade [with whom parity is claimed], Dinesh Rajput, Pratik Tonde caught hold the informant and his friend Suraj and pushed them towards the main door.

11. Similarly, the statement of eye witness Advocate Dhoot was also gone into. Besides mere presence of present applicants, no specific role is assigned to them in his statement. He has stated the manner of assault made by other co-accused which is in consonance with the statement of the informant Pravin. Admittedly the other eye witnesses have not stated about any active role on the part of applicants.

12. Reading of statements of material witnesses reveals that besides one general statement against applicants about assault by means of chair, there is nothing against them. Pertinent to note that in detailed statement dated 07.05.2019, no role is ascribed to applicants besides mere presence. The main allegations were against co-accused namely Vikram @ Chotu, Ranjit, Suraj and some others. Neither learned A.P.P., nor Shri Saboo, learned Counsel are able to point out any role of these applicants in the alleged incident.

13. The learned A.P.Ps appearing for State submitted that presence of applicants at the spot itself is sufficient to attract joint liability with the aid of Section 149 of the Indian Penal Code. They would submit that the applicants were the members of unlawful assembly and therefore, no overt act is necessary to fasten the liability on them. True, each member of the unlawful assembly need not have any overt act but, they must share common object. The incident as narrated, discloses that the assailants have not carried any weapon, but, the deadly assault was

made with the aid of certain articles which were in the office of the Charity Commissioner. Therefore, it is a matter of evidence to be decided whether applicants have shared any common object at the relevant time. Besides general omnibus statement, there is nothing against applicants and to my mind, this is not sufficient to keep them behind bars for longer period.

14. On the ground of parity, the learned Senior Counsel took me through several bail orders passed by this Court wherein co-accused Pratik Tonge, Mayur Ahir, Dinesh Rajput and Satish Tayade were released on bail. More particularly, release of Satish Tayade in Criminal Bail Application No.1101/2019 has been pressed into service. The reason is that name of Satish was mentioned in FIR like applicants. Moreover, it is submitted that role assigned to Satish was little bit grave than applicants, still this Court by passing reasoned order has released him on bail.

15. After revisiting the vital statements of eye witnesses, it is apparent that besides omnibus statement it was alleged that Satish had caught hold the informant and pushed him towards the door. As

regards to applicants there is even no such allegation. Therefore, definitely one can see that the role assigned to co-accused Satish was grave, and therefore, the rule of parity would squarely apply. Inasmuch as on independent scrutiny I do not find any reason to deviate from the reasoning recorded by this Court while releasing Satish on bail.

16. Shri Saboo, learned Counsel while making independent submission besides other grounds took me through certain earlier bail orders to show that the applicants does not deserve for bail. He has pointed out two orders passed in Anticipatory Bail Application Nos. 594/2019 and 752/2019 pertaining to applicants Pravin and Sabir respectively to show that they have withdrawn those bail applications. Infact these withdrawals were prior to release of Satish in bail application No.1101/2019. Moreover, those withdrawals pertains to anticipatory bail applications which has independent consideration. Now the applicants are already arrested and have faced custodial interrogation and therefore, different parameters would apply for considering their case for

regular bail.

17. To the next, Shri Saboo, learned counsel for the informant has pointed towards rejection of bail application No.8/2020 pertaining to Suraj Gawde dated 15.01.2020. True, after release of co-accused Satish Tayade, bail application of Suraj came to be disposed of with observations that this Court was not inclined to grant bail. However, there is marked distinction in between the role assigned to Suraj and present applicants. At the cost of repetition I may say that in detailed statement dated 07.05.2019, informant Pravin has specifically stated that co-accused Suraj Gawde assaulted on the head of the deceased by means of iron crunches, which is not the case of applicants. Needless to say that rejection of bail of one of the co-accused is no ground, unless the role assigned to both of them is exactly similar. Therefore, the submission of Shri Saboo in this regard does not hold any water.

18. The learned counsel for informant has pointed towards an order dated 13.12.2019, passed in Bail Application No.1053/2019. This was bail

application of Shriram, which came to be withdrawn. It appears that it was a simple withdrawal of bail application with liberty to move after one year. The entire episode discloses that the real dispute was in between deceased Kisanrao and Shriram. As per prosecution case, one day prior to the incident Shriram gave threats to the deceased and on the date of incident, he was physically present with his sons. It can be gathered that Shriram was the cause for the entire episode and therefore, withdrawal of his bail application has no impact at all.

19. Shri Saboo, learned counsel would further submit that both the applicants were absconding for long period, and therefore, if they are released their presence may not be available for trial. Particularly he has filed some documents to show that co-accused Sabir was arrested from State of Karnataka.

20. In response, learned Senior Counsel submitted that the applicants have applied for anticipatory bail which were pending for months together. It is also submitted that proclamation was not issued against them so as to consider them to be

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absconders. Infact the circumstance of abscondence can be used in both ways. However, that is a matter of trial, but, at this stage imposition of certain stringent conditions would take care for securing their presence for the purpose of trial.

21. Having regard to the above discussion, the applicants are entitled for bail on both counts i.e. on merits as well as on the ground of parity. Admittedly investigation is completed and charge sheet has also been filed. Therefore, I find that both applicants have made out a case for grant of regular bail, resultantly I pass the following order.

- (i) Applicants/accused – Mohammad Sabir Abdul Khalil and Pravin @ Munna Shriram Gawande be released on bail in connection with Crime No.225/2019 registered with Police Station Civil Lines, Akola on their furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount each.
- (ii) Applicants/accused shall not enter the territorial jurisdiction of Akola Municipal Corporation during the pendency of the trial, except for the purpose of attending the Court on the dates when the trial is

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fixed.

- (iii) Applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) Applicants/accused shall provide their residential address and cell number to concerned Investigating Officer and shall not change their place of residence without prior intimation to the concerned Investigating Officer.

22. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.