

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 BAIL APPLICATION NO.19 OF 2020

GABBARSING @ GARBAD ANGRESHA PAWARA
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. J. S. Gangawane
APP for Respondent – State : Mr. S. Y. Mahajan

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 8th February, 2021

ORDER :-

1. Present applicant has been arrested in connection with Crime No.59 of 2019 registered with Shahada Police Station, District Nandurbar for the offences punishable under Sections 302, 143, 147, 148, 149, 342, 436, 506 of Indian Penal Code and under Section 3/25 of Indian Arms Act. The application has been filed for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. J. S. Gangawane for the applicant and learned APP Mr. S. Y. Mahajan for respondent - State.

3. It has been vehemently submitted on behalf of the applicant that due to the property dispute, the present applicant has been falsely involved. In fact, he works with the contractor at a construction site and he was not even present at the spot when the alleged incident took

place. After taking this Court through the FIR, it was pointed out that no specific role has been attributed to be present applicant and even the dispute about the property can be considered from the contents of the FIR itself. The statements of the witnesses are stereotyped. The applicant has been arrested on 27-02-2019 and since then he is in custody. The investigation is over and charge-sheet is filed. There is no progress in respect of the case. He, therefore, canvassed for releasing the applicant on bail.

4. The application has been strongly opposed by learned APP and he submitted that the father and brother of the informant both have been murdered. The enmity is a double edged weapon though in the FIR it can be seen that there is dispute in respect of the agricultural land. The weapons those were used in committing the crime are sword, big knife, arrow. Further, it can be seen from the FIR that they had set the house to fire and, thereafter, when the deceased and other family members were running to save their lives, both the deceased were chased and murdered. Perusal of the postmortem reports would show that they were brutally assaulted. There are many eye witnesses to the incident. Further, the specific role has been attributed to the present applicant, when the informant also says that the applicant along with others had attacked by the weapons. Further, in the statement of

mother of the informant – Natibai, she has specifically stated that the present applicant had placed sword on her neck and she was stopped from saving the life of her husband and son. Further, in the statement of witness – Nonibai, it is specifically stated that the present applicant had weapon in his hand. Two swords and one big knife has been seized, which according to panchanama, there were blood stains on the sword. Statement of witness Kalusing under Section 164 of the Code of Criminal Procedure would show that deceased Dharmesh @ Dharamsing was assaulted by accused Thoba, Ramsha and the present applicant. Therefore, when active role has been attributed to the present applicant, he does not deserve discretionary relief.

5. Though now the investigation is over and charge-sheet has been filed, that will not be the only ground where the applicant would be having any right to be released on bail. What evidence has been collected is also required to be considered. The FIR is not an encyclopedia, however, perusal of the same would show that though there was a dispute between the family members in respect of agricultural land, yet, the law requires that, that dispute should be resolved by legal permissible mode and not by taking law in hand. The incident has taken place at about 1.00 p.m. on 24-02-2019. Informant, his father deceased Fulsing, elder brother deceased Dharamsing were

inside the house and the mother of the informant was outside with the grandchildren. When they found that somebody was pelting stones on their house, they saw that 12 known persons with some other persons were coming towards their house in attacking mode and they were all armed with sword, big knife and arrow. They had set the house of the informant to fire and when the informant and others, who were inside the house, started running out of the house to save their life, the accused persons restrained father and Dharamsing from proceeding further. They were assaulted with the weapons in their hand. Name of the present applicant is specifically taken. The informant had fled away from the spot and, therefore, he cannot be the proper witness to state about the further proceedings and events. Statement of his mother who was present at the spot shows that the present applicant was holding sword. She has also stated that the present applicant along with others had given blows with big knife and sword on her husband. She was restrained by the present applicant and one Thoba by placing sword on her neck. The two swords used in commission of the crime were dropped at a distance from the body of deceased Fulsing. Other witnesses also state the same fact. If the incident has taken place in a same way, it cannot be said that their statements are copy paste. The statements of these witnesses have also been recorded under Section

164 of the Code of Criminal Procedure and then they are attributing specific role to the present applicant.

6. The postmortem report of Fulsing would show that he has sustained about 27 surface injuries, most of which are incised wound, CLW and even stab injuries. Injury No.27 says amputation (cut injury) of left leg above ankle joint. The severity can be considered. Further, there are six fractures in his body. His cause of death is hemorrhagic shock due to multiple injuries over body. The postmortem report of Dharamsing would show that he has sustained about five injuries, four of them are incised wound. Further, he has also sustained two fractures. One is multiple fracture of skull and another is fracture of C1 and C2 of cervical spine. His probable cause of death is hemorrhagic shock due to head injury. So, this evidence shows that death of these two persons is homicidal in nature. By panchanama executed on 27-02-2019, the clothes of the present applicant have been seized. The swords which were found on the spot had blood stains. When such evidence has been collected, the applicant does not deserve any discretionary relief.

7. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm