

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 BAIL APPLICATION NO.9 OF 2021

VILAS BHIMRAO GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.J. Salunke, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

...

WITH

917 BAIL APPLICATION NO.77 OF 2021

VISHWANATH BHIMRAO GAIKWAD AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.A. Bhosale, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th FEBRUARY, 2021.

ORDER :

1 All the applicants came to be arrested in connection with Crime No.508/2020 by Taluka Jalna Police Station, Dist. Jalna, for the offence punishable under Section 302, 307, 324, 452, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code, 1860. They have filed present applications

under Section 439 of the Code of Criminal Procedure, 1973. Before we proceed, it will not be out of place to mention here that the applicant No.4 in Bail Application No.77/2021 appears to have already filed Bail Application No.9/2021, and therefore, learned Advocate appearing in Bail Application No.77/2021 submitted that he is not pressing the bail application for the applicant No.4 therein, in that matter but it should be separately considered.

2 Heard learned Advocate Mr. S.J. Salunke for the applicant in Bail Application No.9 of 2021, learned Advocate Mr. P.A. Bhosale for applicants in Bail Application No.77 of 2021 and learned APP Mr. N.T. Bhagat for the respondent in both applications.

3 It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. The informant, his mother and wife have suppressed the real information about the crime and gave a concocted and exaggerated version. Informant Rameshwar Gautam Borude has stated that he was residing with his wife, two children, mother, handicapped sister, her son, her daughter and his own two younger brothers. He had gone to Mantha on 18.08.2020. It was the festival of Pola on that day. One Bhagwan Kaduba Wagh received dash of the bullock and he fell in to the ditch. He thought that he has been pushed by Pradip, who is the brother of Rameshwar. Thereafter, on that count Pradip was assaulted by

Karan, Shahu, Bhagwan and Sonu. Pradip had received injury to his head, and therefore, he was admitted to General Hospital, Jalna. Offence was registered on the basis of his First Information Report bearing Crime No.482/2020 under Section 324, 504, 506 read with Section 34 of the Indian Penal Code. However, then Rameshwar states that on 04.09.2020 at about 7.00 a.m. when he was going for answering nature's call he was attacked by 10-12 persons. He received injury to his head, legs and left hand and then when he was running he found that those 10-12 persons were assaulting his brothers Pradip and Rahul. He says that he left the place in order to save his life and went to New Mondha area. From there he gave phone call to his wife and made inquiry and then his wife told him that his brothers have been killed by the accused persons by trespassing into their house. According to the informant, the said incident is the reflection of old rivalry.

4 The learned Advocates for the applicants further submitted that if we consider this story, given by the informant in his FIR with the statements of his mother and wife, then it gives different version. The wife has not corroborated any statement that she has received phone call from her husband. Statement of his mother would reveal that she was not in a position to see what is happening outside, as she states that she had locked the door from inside, in an attempt to save herself. She states that she was

brought out of the house by police when they arrived at the scene. Therefore, the real facts have not been stated. There is considerable delay of 8 hours in lodging the FIR. Injury certificates of Rameshwar and Narmadabai i.e. his mother would show that they have sustained only simple injuries. In fact, it also appears that the statements of witnesses were tried to be recorded under Section 164 of the Code of Criminal Procedure before learned Judicial Magistrate First Class, however, they did not appear. This fact is also required to be taken into consideration. Now, the investigation is over and the charge sheet is filed. Therefore, the further physical custody of the applicants is not at all required. The charge-sheet shows involvement of 47 accused persons; 26 are arrested and 20 are shown to be absconding. Under such circumstance, it would take long time to stand their trial. Though it is shown that certain seizure has been made from the accused persons, yet, that would be subject to the proof by the prosecution. Both the learned Advocates for the applicants, therefore, canvassed for releasing the applicants on bail.

5 Per contra, the learned APP strongly opposed the applications and submitted that the rivalry can be seen from the fact that deceased Pradip had lodged report against four persons, in respect of incident dated 18.08.2020, when he was still an indoor patient with Civil Hospital, Jalna. But thereafter it appears that after he was discharged, immediately this

incidence has taken place. Specific role has been attributed to the present applicants. Though mother of the informant had locked herself in order to save her life, she could have seen, what is going on outside, through window. Further, as regards the statement of the wife of the informant is considered, she has also specifically stated the role played by each person. The applicants have discovered their clothes and the weapons used in the commission of the crime. Applicants are accused Nos.4, 9, 14, 28, 8 and 11 as per the charge-sheet. As regards applicant No.1 (accused No.4), it is stated that he has assaulted the two persons, whose murder has been committed i.e. Pradip and Rahul, with iron pipe. Applicant No.2 (accused No.9) has used iron rod, applicant No.3 (accused No.14) assaulted with stick, applicant No.5 (accused No.8) assaulted with stick, applicant No.6 (accused No.11) also assaulted with sticks and applicant in Bail Application No.9 of 2021 (original accused No.28) assaulted with stick. If we consider the Post Mortem reports, then it gives that not only there were multiple surface wounds but even internally also severe injuries were caused. In respect of death of Rahul, the probable cause of death is, "Death is due to multiple major injuries over body as # bilateral tibia-fibula AA 1/3 L/3C # (Rt) Supra Condylar Hamarus C # Radius-ulna M/13 with Head injury with intra-cerebral bleeding as poly trauma however, viscera is preserved." In respect of death of Pradip, the probable cause of death is, "Death is due to Head injury C subdural

hematoma at fronto-partial area e intra-cerebral bleeding with multiple injuries over body, however, viscera is preserved, opinion is reserved may be given after reports of C.A.”

6 Not only the wife and mother are stated to be the witnesses but there are other witnesses also, who may not be knowing the names of the accused persons, but definitely they were certain in saying that a mob had attacked. It will also not be out of place to mention here that certain witnesses have also stated that somebody had assaulted the injured and a very short statement has been given, which may be indicating about the fear in the mind of the witnesses, taking into consideration involvement of so many accused persons. Further, piece of evidence, that has been collected against the present applicants is the statements, under Section 27 of the Indian Evidence Act and the discovery of the weapons. Therefore, taking into consideration the manner in which the offence has been committed in a small village, when mob has attacked and brutally murdered two persons, then the applicants do not deserve to be released on bail. Hence, following order.

ORDER

Both the applications stand rejected.

(Smt. Vibha Kankanwadi, J.)