

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.749 OF 2021

PRAKASH BATU MOHITE
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N.L. Chaudhari
APP for Respondents: Mr.S.D. Ghayal.

CORAM : V.G. BISHT, J.

DATE : 18th August.2021.

PER COURT:

1] This application has been filed by the applicants under Section 439 of Cr.PC, 1973 to enlarge them on bail in connection with FIR No. 182 /2021, registered with police Station, Shahada, Dist. Nandurbar, for the offences punishable under Sections 307, 323, 504 r/w. 34 of IPC.

2] On 12.3.2021, at about 3.30 p.m., one Appa Jaysingh Chavan informed the informant that a quarrel is going on between his uncle, namely, Yuvraj Mohite and maternal uncle – Laxman Bansi Chavan(Accused No.4). When the informant visited the house of said uncle, he saw Laxman (Accused No.4) was armed with an axe and alongwith him were, Punjab (Accused No.1) armed with stick, Prakash Batu Mohite (Accused No.2) armed with stick, and Shankar Bondaru Jadhav (Accused No.3) armed with an iron rod. All the applicants were abusing his uncle. When the informant and others asked them not to

abuse, Punjab Chavan(Accused No.1) took an axe from the hands of his father Laxman Chavan (Accused No.4) and Accused Nos. 2 and 3 caught hold of said Yuvraj and then, accused Punjab gave a blow of axe on the head of said Yuvraj. When the informant and others tried to save said Yuvraj, all the applicants and said accused, started beating them, by means of sticks and iron rod. Even the informant was assaulted on his shoulder by Accused No.3.

3] Mr. N.L. Chaudhari, learned counsel for the applicants submitted that a bare reading of the FIR would reveal that there is no motive on the part of the applicants to commit the alleged crime. The learned counsel then invited my attention to the various medical certificates filed at Page Nos. 168, 169 and 170, wherein, all the injured witnesses had allegedly suffered injuries. The FIR also would show that prior to the incident in question, a dispute had taken place in a marriage ceremony between said Yuvraj and Panjab Laxman Chavan.

4] The learned counsel next submitted that the statements of alleged eye witnesses, who are related witnesses, are cyclo-styled statements. Similarly recovery of the weapon used in incident has already been done from the spot. In view of the fact that the investigation is over, no purpose would be served if the accused are allowed to remain behind bars. The learned counsel further submitted that Applicant No.3 - Laxman, being a senior citizen of more than 70 years, he deserves to be released on bail.

5] Mr. S.D. Ghayal, learned APP, on the other hand, vehemently opposed the submissions of learned counsel for applicants by contending that the role of each applicant is elaborately explained in the FIR. It were

applicant Nos. 1 and 2 (Prakash and Shankar), who had caught hold of the injured Yuvraj, whereupon, accused Panjab took an axe from the hands of his father i.e. Applicant No.3 (Laxman) and then gave a lethal blow on the head of Yuvraj and thereby caused grievous injury. According to learned APP, said injured, because of the grievous injuries sustained by him, is unable to speak and, therefore, his statement could not be record. The learned APP invited my attention to the to the Injury Certificate, statements of eye-witnesses including statements under Section 164 of Cr.PC. and forcefully submitted that this is not a case, where the accused deserve to be released on bail, inasmuch as, if they are released, tampering of witnesses cannot be ruled out.

6] A bare perusal of FIR would show that it were Applicant Nos. 1 and 2, who had caught hold of the injured, namely, Yuvraj Mohite. It could be further seen that it was accused Panjab , who snatched an axe from the hands of his father, namely, Applicant No.3 Laxman, and then gave a fatal blow on the head of Yuvraj. What appears prima facie from the contents of the FIR is that all the accused were armed with various weapons of which Applicant No.3 was armed with deadly weapon, namely, an axe. It is also pertinent to note that when Accused No.1 – Panjab snatched the axe from the hands of Applicant No.3 (Laxman), Applicant No.3 failed to dissuade him from using the axe and thus, allowed accused Panjab to give a fatal blow on the head of said Yuvraj. Equally important is the role of Applicant Nos. 1 and 2, who had caught hold of said Yuvraj and thus rendered him helpless and enabled Panjab to give a blow of axe on his head.

7] The statement of witnesses, particularly, Simabai Dhanraj Mohite and Shantabai Yuvraj Mohite, prima-facie support the allegations

levelled against the applicants in the FIR. They also unisonly state in their respective statements that it were Applicant Nos. 1 and 2 who had caught hold of Yuvraj, whereas, accused Panjab had snatched the axe from the hands of his father, namely, applicant No.3 Laxman and then gave a blow of axe on the head of Yuvraj and thereby caused grievous injury.

8] It is also apparent from the record that injured Yuvraj was then shifted to Seva Super-Specialty Neuro Trauma and Critical Care Centre, Dhule and medico-legal certificate shows a head injury. The nature of injury was grievous. Then, there is medical certificate issued by Shreyas Accidental Hospital dated 13.3.2021, which also noted that the patient was first referred to Civil Hospital Nandurbar and from there, to Seva Super-Speciality Hospital, where, temporal intra-cerebral hematoma was noted and craniotomy was done. There is no challenge to the submission of the learned APP that because of the said grievous injury, the injured, namely, Yuvraj is not in a position to speak.

9] Having regard to the facts and circumstances of the case, and the manner in which Yuvraj was assaulted in furtherance of common intention, I am of the considered opinion, that the present applicants do not deserve to be enlarged on bail. Hence the following order.

: O R D E R :

The application stands rejected.

The observations made in the order are prima-facie in nature for the purpose of decision of the present application and, therefore, the learned trial court shall not be influenced by those observations.

**[V. G. BISHT]
JUDGE.**