

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1298 OF 2020

1) Abhiman Hiranman Sonawane
and ors. = **APPLICANTS**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr. AN Irpatgire, Adv. h/for Mr. Nitinrao Bhadane,
Advocate for Applicant/s;

Mrs. DS Jape, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 27th January, 2021.

PER COURT :-

1. Present applicants have been arrested in connection with CR No.24/2017 by Pimpalner Police Station, District Dhule and after completion of the investigation, charge sheet was filed. The applicants are facing trial for the offences punishable under Sections 302, 143, 147, 149, 148, 323, 324, 504, 506 of IPC and under Sections 37(1) (3) r/w 135 of Bombay Police Act. The case has been committed before the Sessions Court

2. The case bearing Sessions Case No.70/2017 has been committed to the Court of Sessions, Dhule. Further, it appears from the record that in all nine witnesses were examined by the prosecution. Now, the applicants have filed the present application under Section 439 of Cr.P.C. for bail.

3. Heard learned Advocate and learned APP appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicants that the case has been committed to the Court of Sessions and trial thereof has begun. It is almost over and statements of the accused persons, under Section 313 of Cr.P.C., are about to be recorded. It had come in the evidence that the Investigating Officer that a cross-complaint has been filed and it is pending before the learned JMFC, Sakri, which is registered as RCC No.167/2018. Now, the learned Sessions Judge has called the Record and Proceeding of RCC No.167/2018 for trial. Now, the trial will prolong. Unless trial in RCC No.167/2018 is taken up simultaneously with Sessions Case No.70/2017, the matter will not progress. The vital rights of the accused are, therefore, hampered and, therefore, the learned Additional Sessions Judge ought to have released the applicants on bail. However, the applications moved for bail have been rejected and, therefore, the applicants have no alternative but to knock the doors of this court. He, therefore, canvassed for release of the applicants on bail.

5. Per contra, the learned APP strongly opposed the application and submitted that till the cross-examination of the Investigating Officer, it was not made known to the concerned court that

there is a cross-complaint and, therefore, both the trials could not go together. Now, when the said fact is brought on record, both the trials would go simultaneously and that will not give an advantage to the present applicants, if released on bail.

6. At the outset, it is to be noted that present applicants are facing the trial for the offences referred to above. The circumstances under which the offences are stated to have been committed, are that they had formed an unlawful assembly along with four other persons. They were armed with sticks, lathis, iron-Tommy. They had attacked the informant and family members by chasing some of them. They have been assaulted severely and it has resulted in death of one Hiranman Bhavsing Desale. Now, the Sessions Case against them, i.e. Sessions Case No.70/2017, was committed to the Court of Sessions on 5.2.2017. Charge was framed on 20.12.2017 against in all six persons and it appears that one is child in conflict with law. Now, in all nine witnesses have been examined. The prosecution has closed its side for leading evidence and the matter was kept for recording statements of the applicants under Section 313 of Cr.P.C. Further, it appears from the record that it was brought to the notice of the Court that there is cross-complaint filed on behalf of the side of the applicants against the informant and others and the case arising out of that FIR, i.e. RCS No. 167/2018, was still pending before JMFC, Sakri for the offences punishable under

Sections 143, 147, 148, 149, 324, 323, 504 and 506 of IPC.

7. In Anil Bhaskar Sonavane Vs. State - (1976) 78 Bom.L.R. 325, it has been held that, "it is desirable that cross-complaint and cross-cases, arising out of the incident of riot, one triable exclusively by Court of Sessions and the other triable by the Magistrate, be tried in quick succession by the same Presiding Judge in Sessions Court." It was held that, Section 323 of Cr.P.C. laid down without any reservation provides that if Magistrate during inquiry or trial comes to the conclusion at any stage before he signs the judgment, that case "ought to be tried by the Court of Session" should commit the case to the Court of Sessions. Further, in Nathi Lal and Ors. Vs. State of U.P. and Anr. - 1990 SCC (Cri.) 638 and State of M.P. Vs. Mishrilal (dead) and Ors. - AIR 2003 SC 4089, same ratio has been laid down that these cases should be tried before the same Judge in Court of Sessions in quick succession.

8. Therefore, definitely both the cases should be before the Court of Sessions. Now, in this case, there appears to be absolutely no attempt either on the part of the present applicants or the Advocate, who was representing them before the Court of Sessions, to bring the said fact to the notice of the Court, so that further procedure could be adopted. Further, the interesting point, to be noted that from the copies

of the evidence of prosecution witnesses taken in Sessions Case No.70/2017 produced on record, is that there was absolutely no question asked in respect of the cross-case. Therefore, when only at the stage of the cross-examination of the Investigating Officer, if the fact is coming to the knowledge of the Court of Sessions, then the applicants themselves will have to be blamed for the delay, if any. If they would have pointed it out to the concerned Court at any earlier point of time, then the said cross-case could have been committed by the learned Magistrate to the Court of Sessions. Now, because of their own inaction, the applicants cannot get any advantage, that too their release on bail. Therefore, this is not a fit case where the discretion needs to be exercised in favour of the applicants.

9. In the result, the Bail Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV