

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

**CRIMINAL APPEAL NO.676 OF 2020**

Ashok s/o Arun Shendge  
Age : 24 years, Occu : Agri,  
R/o. Mangwadgaon, Tal. Kaij,  
Dist. Beed .. Appellant

Versus

1. The State of Maharashtra
2. Dhanraj s/o Babu Pawar  
Age : 25 years, Occu : Agri,  
R/o. Mangawadgaon, Tal. Kaij  
at present Resident of Yeshwantrao  
Chavan Chowk, Ambajogai Dist. Beed. .. Respondents

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Shri N.S. Ghanekar, Advocate for the Appellant  
Shri S.G. Sangle, APP for the State / Respondent No.1  
Shri P.V. Tapse Patil, Advocate for Respondent No.2

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**CORAM : RAVINDRA V. GHUGE  
AND  
B. U. DEBADWAR, JJ.**

**Reserved on : 11-02-2021  
Pronounced on : 16-02-2021**

**ORDER (PER: B.U. DEBADWAR, J.) :-**

1. This is an appeal against the order dated 05-12-2020 passed by the Additional Sessions Judge, Ambajogai in Special Sessions Case No.43 of 2020 arising out of FIR bearing No.106 of 2020 registered at Yusuf Wadgaon Police Station, Tal. Ambajogai,

Dist. Beed for the offences punishable under Section 302, 307, 120B, 325, 143, 147, 148, 149, 435, 427, 323 of the Indian Penal Code, 1860 (hereinafter 'IPC'), 4/25 of the Arms Act, 1959, 3(1)(g), 3(2)(va), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 184 of the Motor Vehicles Act, 1988, whereby the learned Additional Sessions Judge refused to grant the bail.

2. We have heard Mr N.S. Ghanekar, learned Advocate for the appellant, Mr. S.G. Sangle, learned APP for the State and Mr P.V. Tapse Patil, learned Advocate for respondent no.2 / first informant.

3. On 14-05-2020 Dhanraj Babu Pawar lodged First Information Report *inter alia* contending that, on 13-05-2020 at about 07:00 p.m., the Pawar Clan started its journey in a tractor and on two motorcycles towards land in dispute bearing Survey No.171 situated at village Mangwadgaon, Tal. Ambajogai, Dist. Beed. The names of the persons, who were travelling towards the land in dispute, have been mentioned in para no.3 of the First Information Report. They were carrying their utensils and necessities with an intention of making an overnight halt in the land in dispute. After

they reached the destination and got down from their respective vehicles along with their necessities and utensils, they were said to have been attacked by Sachin Mohan Nimbalkar and Hanumant @ Pintu Mohan Nimbalkar accompanied by 9 to 10 persons and in the said brutal attack Babu Shankar Pawar, Prakash Pawar, Sanjay Pawar, father and brothers of first informant Dhanraj Pawar respectively, got killed on account of blows inflicted by the accused by swords and axes. Daduli, the sister-in-law of the first informant suffered grievous injuries, but survived. She has narrated horrified incident to the police. The details of the incident have been set out in FIR. It is also stated in the FIR, as to how the person of Pawar Clan who have survived, started running here and there, in view of the sudden attack committed by the accused in the darkness of the night.

4. Appellant namely Ashok Arun Shendge has been arrayed in the charge-sheet as accused no.7. Upon rejection of first application for bail, he had filed second application for bail, after filing of the charge-sheet in the Court. After hearing both the sides, the learned Additional Sessions Judge, Ambajogai by passing impugned order refused him to grant bail. Therefore, he has come before this Court with present appeal.

5. While taking us through the charge-sheet and the voluminous papers appended thereto, Mr N.S. Ghanekar, Advocate for the appellant vehemently argued that the appellant is innocent. He has been falsely implicated in the crime. Allegations made in the FIR are vague, baseless and concocted allegations. There is no *prima facie* evidence against the appellant. No specific role has been attributed to the appellant in the incident. Name of the appellant does not find place in the FIR. After about 9 days of lodging FIR, first informant and some witnesses falsely involved the appellant in crime. The appellant has no concern either with the land in dispute or with the civil litigation pertaining to the same. Besides, he was not the party to any criminal proceeding pending or decided between Nimbalkar Clan and Pawar Clan. No incriminating article of any kind came to be recovered from the appellant. The recovery of alleged weapons from the spot is a false and doubtful recovery. Nobody from alleged eye witnesses have identified the appellant in the test identification parade. The name of the appellant also does not find place in the statements of alleged eye witnesses recorded under Section 161 of CrPC shortly after the incident. The appellant is in jail since 14-05-2020. He has no criminal antecedents. He is a poor agriculturist. He is the only bread earner of his family. His family including two sons, who are taking education, are facing starvation.

He is ready to furnish bail to the satisfaction of the Court and abide by all conditions that would be imposed. Co-accused Anant Baburao Ingle has been released on bail by this Court. The allegations made against the appellant are similar to the allegations made against Anant Baburao Ingle, therefore, the appellant deserves to be released on bail even on the ground of parity. The learned Additional Sessions Judge, Ambajogai has not considered the grounds mentioned in bail application including the ground of parity in proper perspective and wrongly refused to grant bail to the appellant.

6. Per contra, Mr S.G. Sangle, APP vehemently argued that, first informant, victims and eye witnesses of the incident belong to backward class community, whereas accused belong to Maratha community. There is a civil dispute between victims and accused pertaining to landed property. Accused have committed murder of three persons and attempted to commit murder of first informant and other eye witnesses. The attack committed by the accused is a very brutal attack. First informant and the witnesses are illiterate persons. Due to illiteracy, first informant could not state names of all the assailants to the police while lodging FIR. The accused have criminal antecedents. They have been prosecuted in respect of earlier attack committed by them on the persons of Pawar Clan in the year 2006.

The appellant is not at all entitled for bail on the ground of parity as co-accused Anant Baburao Ingle, to whom, this Court has granted the bail is a lecturer by profession and since many years he resides at Beed, whereas the appellant – accused is a strong supporter of main accused and resident of village Mangwadgaon where the incident took place. There is every possibility of either his tampering with evidence or fleeing away, therefore, the appellant is not at all entitled for bail.

7. Mr P.V. Tapse Patil, Advocate for respondent no.2 / first informant while adopting the arguments advanced by Mr S.G. Sangle, APP prayed for dismissal of the appeal by contending that, the attack committed by the accused was pre-planned and very brutal attack. All the accused including the appellant had committed said attack in furtherance of their common intention. There is *prima facie* evidence about the involvement of the appellant in the incident. Therefore, though no specific role is attributed, under Section 149 of the IPC, the appellant is vicariously liable for the incident. The trial has already been expedited and time frame is fixed by this Court while refusing bail to the co-accused Rajabhau Harishchandra @ Harichandra Nimbalkar. As such, the appellant is not entitled for bail.

8. In the light of aforesaid submissions made at bar by the Advocate representing both the sides, we have carefully gone through the record i.e. charge-sheet and papers appended to the charge-sheet. It is evident from the record that the Pawar Clan (victims, first informant and eye witnesses) has succeeded against Nimbalkar Clan (main accused) in civil litigation up to the first appeal level before the District Court. The parties are before this Court in Second Appeal No.111 of 2018. By order dated 12-12-2018 this Court has recorded statement made on behalf of the Pawar Clan (the respondent in Second Appeal) that they would maintain status-quo with regard to the possession of the suit land. Pawar Clan and Nimbalkar Clan both claim to have been in possession of the suit land.

9. The incident took place on 13-05-2020 at about 09:00 p.m. in the land in dispute. Record speaks volumes that the assailants committed gruesome attack on the victims by proceeding to the land in dispute in a tractor and on two motorcycles along with deadly weapons and killed three persons of the Pawar Clan and also attempted to commit murder of the rest of the members of the Pawar Clan, who were present in the field. Though the name of the appellant does not find place in the FIR, however, first informant Dhanraj Pawar and eye witnesses Shivaji Pawar and Gita Pawar in

their supplementary statement named the appellant as one of the assailants. It is true that, nobody from the first informant and eye witnesses has identified the appellant in an identification parade conducted by Tahsildar. It is also true that, the name of the appellant does not find place in the statement of any of the witnesses recorded under Section 164 of CrPC, but only for that reason, at this juncture, it cannot be said that the appellant is innocent and he had no concern with the incident. Supplementary statements of first informant and two eye witnesses, referred above, *prima facie* prove involvement of the appellant in the incident.

10. It is pertinent to note that, the appellant being member of unlawful assembly, formed for commission of brutal and heinous crime is liable for every act of the assembly by the principle of vicarious liability though specific role played by him in the incident has not been explained by either first informant or two eye witnesses viz. Shivaji Pawar and Gita Pawar.

11. As far as ground of parity is concerned, it is clear enough that the appellant is resident of village Mangwadgaon, Tal. Ambajogai, Dist. Beed where the incident took place and material

witnesses reside, whereas Anant Baburao Ingle is a lecturer by profession and since many years resides at Beed, which is far away from village Mangwadgaon. Therefore, the claim of the parity made by the appellant is not sustainable.

12. The appellant being a person hailing from the village Mangwadgaon, where the incident took place and the eye witnesses reside, possibility of his tampering with evidence by using muscle power cannot be ruled out. Moreover, while disposing of appeal bearing Criminal Appeal No.1 of 2021 preferred by Rajabhau Harishchandra @ Harichandra Nimbalkar, this Court has directed the learned Additional Sessions Judge, Ambajogai to frame the charge on or before 06-03-2021 and complete the trial expeditiously and preferably on or before 31-12-2021.

13. Having regard to the totality of the evidence and circumstances discussed above, we are not inclined to grant bail to the appellant. Therefore, the appeal is dismissed.

**(B. U. DEBADWAR)**  
**JUDGE**

**(RAVINDRA V. GHUGE)**  
**JUDGE**