

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 BAIL APPLICATION NO.1522 OF 2021
WITH APPLN/3178/2021 IN BA/1522/2021

PANCHAFULA W/O SHESHRAO ACHEGAVE
VERSUS
THE STATE OF MAHARASHTRA

...
WITH BA/1488/2021
WITH APPLN/3177/2021 IN BA/1488/2021

1. DILIP HANMANTRAO BIRADAR
2. HANMANT PARSHURAM BIRADAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Bhapkar Shivaji Bhimrao
APP for Respondent – State : Mr. N. T. Bhagat
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20.12.2021

ORDER :-

. Criminal Application Nos.3178 of 2021 and 3177 of 2021 filed by the original informant seeking permission to assist learned Public Prosecutor stand allowed and disposed of.

2. Present bail applications have been filed by accused Nos.10, 5 and 8 respectively, who have been arrested in connection with Crime No.138 of 2021 by Degloor Police Station, Dist. Nanded for the offences punishable under Sections 143, 147, 148, 149, 302, 324, 323, 504, 506

of Indian Penal Code and Section 135 of Maharashtra Police Act.

3. Heard learned Advocate Mr. S. B. Bhapkar for the applicant in Bail Application No.1522 of 2021, learned Advocate Mr. S. S. Jadhav for the applicants in Bail Application No.1488 of 2021 and learned APP Mr. N. T. Bhagat for respondent – State assisted by learned Advocate Mr. Avinash Suryawanshi for the original informant.

4. It has been vehemently submitted on behalf of the applicants that the investigation is complete and the charge-sheet has been filed. Therefore, the further physical custody of the applicants is not required. As regards accused No.10 is concerned, learned Advocate representing her submitted that accused No.9, who has been similarly placed by the informant, has been released on bail and, therefore, on the ground of parity also, she needs to be released on bail. The contents of the FIR would show that the allegations against them were that they had pulled the hairs of deceased Yogesh and gave him slaps and fists. Learned Advocate representing accused Nos.5 and 8 submitted that the role assigned to these applicants are giving abuses and assaulting the informant as well as his father with fists and kick blows. As regards Section 302 of Indian Penal Code is concerned, it is stated that one Abhijit, who is accused No.1, had assaulted deceased Yogesh with iron

rod on his head as a result of which he received severe injuries, blood started oozing from his ears and, therefore, at the most that Section would be attributable to accused No.1 and not to the present applicants.

5. Learned APP well assisted by the learned Advocate Mr. Avinash Suryawanshi submitted that there is ample evidence collected against all the accused. All the accused had formed unlawful assembly with common object and it can be seen from the FIR that there was political rivalry between two groups. Statement of eye witness – Shubham Wanje would support the fact that the present applicants had taken active part in assaulting deceased. The postmortem report gives cause of death as sudden cardio-respiratory arrest due to hemorrhagic shock to brain due to head injury. When ample evidence is available, the applicants cannot seek bail as of right.

6. At the outset, it can be seen that the investigation is complete and the charge-sheet as contemplated under Section 173 of the Code of Criminal Procedure has been filed. It presupposes that the further custody is not required for the purpose of investigation. The available evidence on record is required to be considered under these circumstances.

7. The information has been lodged by one Baswaraj Dharmaje, who is an injured eye witness. He states that the incident took place due to

the political rivalry. The role assigned to the applicant – accused No.10 is restricted to the act of pulling hair and slapping as well as assaulting Yogesh by fists. That will not definitely attract ingredients of Section 302 of Indian Penal Code exclusively. As regards the unlawful assembly and allied Sections are concerned, it would be for the prosecution to establish that there was a common object, which is contemplated under Section 143 of Indian Penal Code. As regards accused Nos.5 and 8 are concerned, the FIR gives role to them of abusing, assaulting by kicks and fists to informant and his father. The injured eye witness has not stated that accused No.5 and 8 had assaulted deceased.

8. Witness – Shubham Wanje has given some other story with which we are not concerned right now and no observations about those deviations need to be made, but we can restrict ourselves to the statements made by him attributing role to accused Nos.5 and 8. He has stated that accused Nos. 5 and 8 had assaulted deceased with stick and kicks and fists. However, it is to be noted that he has assigned that similar role to other co-accused persons i.e. almost 10 accused persons. Therefore, if we take that statement as it is, then it will give a picture that all 10 persons were armed with sticks and they had assaulted deceased Yogesh by that and also by kicks and fists. But, if that is compared with the postmortem, report column No.17, then we can find

only one injury, which states plus shaped wound on right side parietal bone. Bleeding present through wound. Column No.18 shows two external injuries i.e. fracture of right parietal bone and occipital bone. Fracture with irregular edges and punched types. There are internal injuries to the skull and then the cause of death, as stated aforesaid, has been given.

9. If we consider the statement of Madhavrao – father of the informant, he is assigning the same role which was assigned by the informant to accused Nos.5 to 8. Further, if we consider the statement of other eye witnesses, they are assigning the role of assaulting deceased with stick to accused Uttam and the discovery of the stick is by Uttam and one Sheshrao. Discovery of iron rod is from Abhijit. Thus, there is no discovery from these applicants. Under such circumstance, the applicants deserve to be released on bail. Hence, the following order :-

ORDER

I) Bail Application Nos.1522 of 2021 and 1488 of 2021 stand allowed and disposed of.

II) Applicant – Panchafula w/o Sheshrao Achegave in Bail Application No.1522 of 2021 and Applicant No.1 – Dilip Hanmantrao Biradar and Applicant No.2 – Hanmant Parshuram Biradar in Bail Application No.1488 of 2021, who have been

arrested in connection with Crime No.138 of 2021 registered with Degloor Police Station, Dist. Nanded for the offences punishable under Sections 302, 324, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code and Section 135 of Maharashtra Police Act, be released on P. R. Bond of Rs.50,000/- with two sureties of Rs.25,000/- each.

III) They shall not tamper with the evidence of the prosecution in any manner.

IV) They shall not indulge in any criminal activity.

V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm