

Sagar Ravsaheb Shinde & Ors.	..	Applicants
Versus		
The State of Maharashtra	..	Respondent

ANTICIPATORY BAIL APPLICATION NO.1137 OF 2021

Abhinav Janardhan Patil & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

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Mr.Nitin Pradhan with Ms.Tanvi G. Tapkire for the Applicants.
Mr.A.R.Kapadnis, APP for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 4th AUGUST, 2021

P.C:-

1. The two applications arise out of C.R.No.98 of 2021 registered with Kavathe Mahankal Police Station, District Sangli and the applicants herein are apprehending their arrest and seek their release on bail, in the event of their arrest. The C.R. invokes Sections 302, 323, 324, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code (**"the IPC"**) read with Sections 37(1)(3) and 135 of the Maharashtra Police Act.

Anticipatory Bail Application No.1099 of 2021 is filed by 11 persons, who are original accused Nos.8, 14, 17, 22, 26, 27, 28, 29, 32, 25 and 15 whereas in Anticipatory Bail Application No.1137 of 2021, there are 4 applicants, who are original accused Nos.16, 11, 36 and 7.

2. Heard learned counsel Mr.Nitin Pradhan for the applicants and learned APP Mr.A.R.Kapadnis for the State.

Alleging that the C.R. in question is a result of political rivalry between the two political factions and a free fight had broken out in front of Grampanchayat building, when the elections for the post of Deputy Sarpanch was to be held on 04/03/2021, learned counsel Mr.Pradhan would urge that this is a case of false implication. He urge that the election for the post of Deputy Sarpanch was hotly contested between the two political parties i.e. the Bharatiya Janata Party ("**BJP**") and the Nationalist Congress Party ("**NCP**") and the villagers of Borgaon had gathered in large numbers, approximately a crowd of 300 to 400 persons, in front of the Grampanchayat building. The complainant Ankush Janardan Kale is from the NCP party whereas the applicants admittedly belong to the opposition faction and Mr.Pradhan would submit that taking advantage of the rivalry, the incident has been exaggerated and the present applicants are wrongfully involved in the act of causing death of one Pandurang Kale and injuring one Ganpati Patil. Mr.Pradhan would submit that on the side of the applicants, accused Nos.13 and 20 themselves have sustained injuries, which clearly reflect the version of the informant and the statements supporting the informant are given with an

aim to implicate the applicants falsely. Learned counsel would submit that deceased Pandurang Kale was one of the person, who had defected into the rival NCP with other three persons, but this itself is not sufficient to attribute motive to the applicants. According to him, a clash did occur between the two political parties, but Ganpati Patil and his companions were the first aggressors and if the statements of the witnesses are perused, prosecution case cannot be believed since there are inconsistencies in their versions. Since no overt act is specifically attributed to the present applicants and going by the version of the informant and the eye witnesses, it is only accused Nos.1, 2, 3, 4 and 10, who have assaulted Pandurang. Thus, according to the learned counsel, implication of the applicants in the C.R. is for oblique political reasons. Custodial interrogation of the applicants is not warranted, since on completion of investigation, the charge-sheet is already instituted in the competent court.

3. Mr.Kapadnis, learned APP would submit that the offence registered against the applicants is under Sections 302, 323, 324, 326 with the aid of Sections 143, 147, 148, 149 of the IPC and since the applicants had formed an unlawful assembly with a common object and since the applicants were aware that the assembly was unlawful and intentionally joined the same as a member thereof, they have been charged under Section 149 of the IPC. He would submit that the presence of the accused persons on the spot has been recorded in the CCTV camera and the applicants were armed with weapons, as per the prosecution witnesses and once their presence is

established in the unlawful assembly, the overt act is not necessarily to be established qua each member of the unlawful assembly. Relying upon the material compiled in the charge-sheet, learned APP would submit that the members of the unlawful assembly were armed with the weapons and they shared a common object of causing hurt to the persons of the opposite faction and some inconsistencies in the version of the persons witnessing the incident is immaterial. Ultimately, he submit that this is a matter of trial. The charge-sheet is filed and since the applicants are evading their investigation, they are shown as 'not arrested'.

4. In a society, when an occurrence takes place involving rival faction, it is but inevitable that the events would be of partition nature. Such events, however, will have to be closely scrutinized with care and caution at the time of trial, keeping in mind that there is always a tendency to involve as many persons of the opposite faction as possibly by merely naming them as having been seen in the melee. When the accused come before the Court for being tried in the backdrop of the material in the charge-sheet, the Court would apply the working test of being assured about the role attributed to other accused coupled with the common object shared by the assembly.

5. When the charge-sheet is perused, 40 named persons are charged for being member of the unlawful assembly and for committing the offences in furtherance of the common object.

The charge-sheet also include the statements of atleast 30 persons, who have witnessed the incident, which include the statement of the injured.

The informant in his complaint filed on 05/03/2021 has disclosed the background and stated that the programme for election of Deputy Sarpanch of the Grampanchayat was scheduled on 04/03/2021 and Ganpati Patil was projected as a candidate from the NCP whereas from the opposite faction, one Sujit Patil was the contender. Since both the parties had six members, each on their side, the vote of the Sarpanch was the deciding factor and it is alleged that to disturb the equation, the opposite faction had planned that the members of their party should not participate in voting or that they should be enticed so that they do not participate in voting. The informant then took the names of 40 persons, who were present and some of them were alleged to have been armed with sticks. There were 22 to 25 persons, who were also present alongwith them. It is alleged that as soon as deceased Pandurang accompanied by injured Ganpati and other persons arrived before the Grampanchayat office at around 1.45 p.m., some assailants rushed towards them and started assaulting. He attribute specific role to accused Nos.1, 2, 3, 4 and 10, who admittedly are not party to the present applications. It is alleged that accused No.1 assaulted the deceased and Ganpati by means of an iron rod. When attempt was made to intervene by the associates of the informant, they were also assaulted. The injured were taken to the hospital and his brother, Pandurang succumbed to the injury. In the complaint, the informant has named 38 persons and described 22 to 25 other

unknown persons had participated in the unlawful assembly where the incident had taken place.

6. The charge-sheet also include statement of injured Ganpati Patil, who speak in sync with the informant and allege that accused Nos.1, 2, 3, 4 and 10 assaulted the deceased by means of sticks in their hands and simultaneously other persons assaulted the deceased by means of sticks, hockey sticks, plastic rods and fist and blows and dragged him towards the concrete road. Accused Nos.12, 22 and 5 are alleged to have pelted stones. Statements of Anandrao Kale, Adhikrao Kale, Nilesh Kale, Amol Kale, Dhanaji Pawar, Vasant Vishnu Patil and Anna Mane are on the similar lines.

7. The postmortem report of the deceased Pandurang record 13 injuries in column No.17, which are in form of abraded contusions over various parts of the body and multiple contusions coalescing and involving an area of size 27 cm x 13 cm over right side of back, with haemorrhage seen in underlying tissue. Column No.19 records under-scalp contusion of 5 cm x 4 cm over left occipital region. The cause of death is opined as 'Injuries to vital organs' and injuries mentioned in column No.17, 19, 20 and 21 collectively are opined to be sufficient in the ordinary course of nature to cause death. The nature of injuries sustained by the deceased is reflection of the assault faced by him.

8. The statements of the eye witnesses and the injured disclose presence of more than five persons on the spot, where a mass had assembled with a common object, which could be gathered from the surrounding circumstances, being the time and place of gathering, the conduct of the members present in the gathering, who were armed with weapons, coupled with the conduct of the members of the unlawful assembly before and after the time of attack. It is a settled position of law that object of an unlawful assembly is a question of fact, which has to be determined keeping in view the nature of assembly, the arms carried by member and behaviour of members at or near the scene of incident. The word 'object' which means purpose or design and in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose assembly i.e. they should be all aware of it and concur in it. Whoever being aware of facts, which render an unlawful assembly, join that assembly or continue with it, would be attributed as a member of the unlawful assembly. If common object is adopted by all persons and shared by them, it would serve the purpose.

9. If the aforesaid legal parameters are applied to the present case, the present applicants are named by the informant and other eye witnesses and their presence is noted on the spot where the incident occurred and resulted into death of Pandurang. Merely on the specious plea that they have been falsely implicated on account of political rivalry can be no ground to infer that they have been falsely implicated. The applicants also submit that two of the accused being

accused Nos.13 and 20 have also sustained injuries and the injury sustained by accused No.13 is a head injury, which required his hospitalization. The whole truth as to who initiated the assault and who were the aggressors can be ascertained during the course of trial. Since the presence of the applicant on the spot is also recorded in a CCTV footage coupled with the evidence compiled in the charge-sheet, the submission of the learned counsel for the applicants that no overt act is attributed to the applicants and it is only the named accused, who had assaulted the deceased and injured, cannot be accepted. Apart from the injured, the statements of persons, who have witnessed the incident, reveal the concerted act on part of the accused persons and since it was a mob of more than 70 to 80 persons, who assaulted by which weapon cannot be conclusively accepted on the basis of the statement, but this requires a thorough investigation with the accused.

10. The following observations of the Hon'ble Apex Court in case of **Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel**¹ are gainfully reproduced, which reiterate the position of law on invocation of Section 149 of the IPC.

“20. In cases where a large number of accused constituting an “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 is essential in such cases for punishing the members of such unlawful assemblies on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an “unlawful assembly”

¹ (2018) 7 SCC 743

is sufficient to render him vicariously liable under Section 149 IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicariously liable under Section 149 IPC for the offence punishable under Section 302 of IPC. Failure to appropriately invoke and apply Section 149 enables large number of offenders to get away with the crime.

21.

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22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that "crucial act" - for example, in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited."

11. Considering the gravity of the offence, nature of accusations and in the wake of the material compiled in the charge-sheet, the applicants, who have escaped the investigation, do not deserve any protection in anticipation of their arrest in a crime, which is registered in March, 2021. Custodial interrogation of the applicants is very much necessary by ignoring their claim of false implication in light of the statements of the eye witnesses. The applications are, therefore, rejected.

12. When I showed my disinclination to grant relief to the applicants, learned counsel Mr.Pradhan makes a statement that he is desirous to approach the Hon'ble Apex Court and submits that the applicants were already protected by an order of the Sessions Court till the application was rejected on 01/04/2021. Further, in the present applications, there is an interim protection operating in their favour. In such circumstances, the interim protection shall continue to operate for a period of two weeks from today so as to enable the applicants to test this order before the Highest Court.

[SMT. BHARATI DANGRE, J.]