

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 2667 OF 2021

Ashok Shrirang Nalawade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Shirish Gupte, Sr. Advocate a/w Mr. D. A. Nalawade i/b Mr. Dilip Bodake for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent–State

API Mr. M. B. Deshmukh from Vaduj Police Station, is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 17th SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 80/2021 registered with the Vaduj Police Station, Satara, for the alleged offences punishable under Sections 302, 143, 147, 148, 149, 323, 109 and 201 of the Indian Penal Code and under Section 3 r/w 25 of the Indian Arms Act.

3 Learned senior counsel for the applicant submits that the applicant has neither been named in the FIR lodged by Bharat Tukaram Patil, PSI, Karad Police Station, nor by the brother-in-law of deceased-Jagdeep Thorat. He submits that even in the alleged oral dying declaration made by the deceased-Jagdeep to his brother-in-law-Vikram Patil and Sagar Fuke, the deceased has not named the applicant as being one of the assailant. Learned senior counsel relied on the statements of Vikram Patil dated 11th March 2021 and 14th March 2021, as well as the statements of Sagar Fuke. He further submits that none of the alleged eye-witnesses have named the applicant as an assailant. According to the learned senior counsel, the incident appears to be an outcome of what had transpired in the inquiry i.e. that the deceased was suspected to have committed theft of sugarcane bags from the factory, alongwith others. He submits that having regard to the peculiar facts, the assault on deceased with fist and kick blows and fiber sticks would not constitute an offence under Section 302, but would be a lesser offence. Learned senior counsel submits that the incident is alleged to have taken place on 10th March 2021 from about 5:00 p.m to 8:00 p.m, after which, Jagdeep's wife and brother-in-law had taken him home at about 8:30 p.m. He submits that the deceased was taken to the hospital only on the next date i.e. on 11th March 2021, and on arrival, he

was declared to be dead. Learned senior counsel submits that investigation is complete and charge-sheet is filed and as such, in the facts, having regard to the applicant's role, his further detention is not warranted.

4 Learned A.P.P opposes the bail application. She submits that the incident in question had taken place in the cabin of the applicant. She submits that the deceased-Jagdeep was assaulted with a fiber sticks and fist and kick blows and even sticks, iron rods and stones by all the accused i.e. 13 accused in the said case.

5 Perused the papers. According to the prosecution, the deceased- Jagdeep, was working with Khatav Man Taluka Agro Processing Ltd. Padal Sugar Factory (hereinafter referred to as 'the Factory'), as a General Manager (Processing); that an inquiry was conducted with respect to misappropriation of sugarcane; and that it was suspected that the deceased- Jagdeep alongwith others had misappropriated sugarcane from the factory. It is alleged by the prosecution that the incident in question took place on 10th March 2021 between 5:00 p.m to 8:00 p.m, first in the applicant's cabin and thereafter, in Manoj Ghorpade's cabin. It is alleged that all the accused assaulted deceased- Jagdeep with fist and kick blows, fiber sticks and sugarcane sticks, in the applicant's cabin and thereafter, in

co-accused-Manoj Ghorpade's cabin, as a result of which, Jagdeep sustained serious injuries. At about 8:30 p.m, Jagdeep's wife and brother-in-law-Vikram Patil are stated to have taken Jagdeep home. On the next day, at about 9:30 p.m, Jagdeep was taken to the hospital and on admission, he was declared to be dead. On 11th March 2021, U. B. Mane, Police Head Constable, who was on duty at the Karad Police Station received a letter from Dr. Ravindra More of the Karad Hospital. Dr. More informed that one Jagdeep was brought to the Hospital by Vikram Patil in an injured condition, with a history of severe injuries, due to assault, which had taken place in the Factory on 10th March 2021 between 5:00 p.m to 8:00 p.m. In view of the unnatural death, ADR was registered and the inquiry was entrusted to Bharat Patil, PSI of Karad Police Station. On receiving the copies of the MLC form and other documents, Bharat Patil, PSI of Karad Police Station, lodged an FIR. The FIR lodged by Bharat Patil is on the basis of the ADR and the information disclosed by Vikram Patil, the brother-in-law of the deceased. The statement of Vikram Patil was recorded on 11th March 2021. Vikram Patil in his statement of 11th March 2021 has disclosed that when he went to the factory, he found Jagdeep in a room and found that he had sustained severe injuries. Jagdeep is alleged to have disclosed to him that he and others, were assaulted by Manoj Ghorpade, Sangram Ghorpade, Sunny Kshirsagar, Prabhakar

Gharge and other 10-12 persons by fist and kick blows and sticks. Vikram Patil, in his statement, has stated that there were blue black marks on Jagdeep's back, hands, thighs and hips. In the supplementary statement dated 14th March 2021, which is at page 211 of the application, Vikram Patil has stated that Jagdeep had disclosed to him that Manoj Ghorpade, Sangram Ghorpade, Prabhakar Gharge, Mahesh Gharge, Sunny Kshirsagar and others had assaulted him with iron pipe, fiber stick, sticks and stones. In both the statements, there is a discrepancy with respect to the weapons of assault used on Jagdeep. Both, in the statements dated 11th and 14th March 2021, Vikram Patil has not named the applicant. The applicant is stated to be Chief Manager of the Factory in whose cabin, first part of the incident is alleged to have taken place.

6 As far as Vijay Satre is concerned, he is not an eye-witness to the alleged incident. Another witness-Sagar Fuke, whose statement is at page 93 of the application, has stated that when he went to Manoj Ghorpade's cabin, they saw that Jagdeep had been assaulted; that he could not get up and hence, they helped him get up. Sagar Fuke has further stated that Jagdeep (deceased) disclosed to them i.e. himself and Vikram Patil, that Manoj Ghorpade, Sangram Ghorpade, Mahesh Gharge, Sunny Kshirsagar, P.A. Anjankumar and Mama had assaulted him with fiber

sticks, sugarcane and iron rod. Even in the said statement, the applicant has not been named. No overt act is either attributed to the applicant nor his presence is disclosed. There are several eye-witnesses to the incident. In almost all the statements, no overt act has been attributed to the applicant. Infact, in the alleged oral dying declaration made by Jagdeep to Vikram Patil and Sagar Fuke, the applicant has not been named as an assailant.

7 The post-mortem report reveals that the deceased had sustained as many as 16 injuries in the nature of contusions on the forearm, shoulder, right hand, right thigh, left thigh, right scapular region, left leg, scapular region, right supragluteal region, right gluteal region and left lumbar region. The cause of death is stated to be multiple contusion as a result of hard and blunt object.

8 The incident is alleged to have taken place between 5:00 p.m to 8:00 p.m on 10th March 2021 and Jagdeep (deceased) was taken home at about 8:30 p.m. It appears that Jagdeep was not taken to the hospital/doctor for treating his injuries, nor any report was lodged with the police station. It is only on the next day i.e. 11th March 2021, Jagdeep was taken to the hospital at about 9:30 a.m. when he was declared to be dead on

arrival. Although learned senior counsel for the applicant submits that the offence, if any, would not constitute an offence under Section 302 but would be a lesser offence, the same is a matter of trial. *Prima facie*, having regard to the role of the applicant i.e. there is no mention of the applicant's name in almost all the statements with respect to the assault by him on the deceased, and considering the fact, that investigation is complete and charge-sheet is filed, further detention of the applicant is not warranted.

9 Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant-Ashok Shrirang Nalawade be released, in connection with C.R. No. 80/2021 registered with the Vaduj Police Station, Satara, on cash bail in the sum of Rs. 25,000/-, for a period of four weeks;
- (ii) The applicant shall within the said period of four weeks, furnish P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(iii) The applicant shall attend the Vaduj Police Station, Satara, on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, till framing of charge;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

10 The application is allowed in the aforesaid terms and is accordingly disposed of.

11 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.