

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

CRIMINAL BAIL APPLICATION NO. 2959 OF 2021

1. Amol Dilip Patil
2. Abhinav Janardhan Patil
3. Vikas Janardhan Patil
4. Mahesh Dattatraya Patil
5. Amit Popat Patil
6. Vinayak Bhaskar Patil
7. Popat Shivaji Patil
8. Prashant Nandkumar Patil

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr. Niranjan Mundargi i/b Ms. Tanvi G. Tapkire for the Applicants

Mr. Ajay Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 8th SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 At the outset, learned counsel for the applicants submits that on instructions, he does not press this application *qua* applicant Nos. 1, 2, 4, 6 and 8. He submits that applicant Nos. 1, 4 and 6 have already surrendered

and are presently in police custody and that applicant Nos. 2 and 8 will surrender tomorrow. Statement accepted. In view of the same, nothing survives for consideration in the aforesaid bail application, *qua* the said applicant Nos. 1, 2, 4, 6 and 8.

3 Today, learned counsel for the applicant Nos. 3, 5 and 7 tendered an application at 10:30 a.m, praying therein that the said applicants be taken into custody and after taking them into custody, they be released on regular bail, considering their role in the aforesaid C.R. i.e. they were only by-standers and were not concerned with the alleged assault. The said application was taken on record. The said applicants, accordingly, were taken into custody. After taking them into custody, the learned A.P.P was directed to file his say. Thereafter, at 1:00 p.m, the application was taken up for hearing the bail application.

4 Accordingly, only the applicant Nos. 3, 5 and 7 seek their enlargement on bail in connection with C.R. No. 98/2021 registered with the Kavathe Mahankal Police Station, Sangli, for the alleged offences punishable under Sections 302, 323, 324, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code ('IPC'); Section 123 of the Representation of People Act and Section 37(1), 37(3) and 135 of the Maharashtra Police Act.

5 Perused the papers. The aforesaid applicant Nos. 3, 5 and 7 alongwith others, had filed a pre-arrest bail application before the learned Sessions Judge, Sangli, which was rejected by the learned Judge vide order dated 1st April 2021. Being aggrieved by the said order rejecting the pre-arrest bail, the said applicant Nos. 3, 5 and 7 alongwith others, filed an anticipatory bail application in this Court being Anticipatory Bail Application No. 1099/2021. The said application was rejected by this Court vide order dated 4th August 2021. The said order is on page 56 of the application. Pursuant thereto, the applicants challenged the said order before the Apex Court by filing an SLP. The said application filed before the Apex Court was withdrawn by the said applicant Nos. 3, 5 and 7 and others, with liberty to approach the trial Court for seeking regular bail. The Apex Court vide order dated 18th August 2021, dismissed the said SLP (Cri.) Nos. 6026-6027/2021, as withdrawn with liberty to the applicant Nos. 3, 5, 7 and others to file an appropriate application before the trial Court seeking regular bail. The trial Court was also directed to consider the same expeditiously, without being influenced by the observations made in the orders passed by the Courts below rejecting the anticipatory bail applications of the applicants. The Apex Court also continued the interim protection granted by the High Court for a period of two weeks from the

date of its order i.e. 18th August 2021. The order of the Apex Court dated 18th August 2021 is on page 66 of the application.

6 Pursuant to the said order passed by the Apex Court, the applicant Nos. 3, 5 and 7 and others filed an application seeking their release on bail. The said application was rejected by the learned Sessions Judge vide order dated 25th August 2021. The said order is on page 73 of the application.

7 Learned counsel for the applicant Nos. 3, 5 and 7 submits that the learned Sessions Judge ought to have taken the said applicants in custody, by permitting them to surrender in terms of ***Sundeep Kumar Bafna vs State Of Maharashtra & Anr.***¹ and thereafter, should have decided their bail application forthwith, having regard to the peculiar facts of the case. Learned counsel for the applicant Nos. 3, 5 and 7 submits that the said applicants i.e. applicant Nos. 3, 5 and 7 were only by-standers/standing at the spot, even according to the prosecution. Learned counsel submits that the statements of all the witnesses show, that though the said applicants have been named, no role/overt act has been ascribed to any of them. The said applicant Nos. 3, 5 and 7 are only stated to have

1 (2014) 16 SCC 623

been present at the spot where the alleged incident took place. He submits that the presence of the said applicants was natural, as the election of the Grampanchayat was to be held on that day i.e. 4th March 2021. He further submits that merely because the applicants have been named in the FIR or the by witnesses was not a ground for rejecting their regular bail application, without considering their role. He submits that there were about 40 persons who are arraigned in the said C.R. and as such the role of the applicant Nos. 3, 5 and 7 will have to be considered in the peculiar facts of this case and that mere presence is not sufficient to arraign the said applicants as accused, by virtue of Section 149 IPC. He submits that the facts disclose that the incident had taken place at the spur of the moment.

8 Learned A.P.P opposes the application. He submits that the applicants i.e. applicant Nos. 3, 5 and 7 have also been named by the first informant as well as by the witnesses. He submits that the said applicants were present at the time when the alleged incident took place. Learned A.P.P however does not dispute the fact, that no overt act has been attributed to any of the said applicants. He also does not dispute the fact, that the statements of all witnesses reveal that the said applicant Nos. 3, 5 and 7 were only standing at the spot at the relevant time and that no role has been ascribed to any of the said applicants, by any of the witnesses.

9 Perused the papers. It appears that in 2017, in the Grampanchayat election of Borgaon, there were two panels, namely, one of Janardhan Patil (original accused No. 1) and Nitin Patil (original accused No. 2) and another panel of Babasaheb Patil and Ganpati Patil. It appears that Janardhan Patil and Nitin Patil were members of the Bharatiya Janata Party (BJP), whereas, Babasaheb Patil and Ganpati Patil were members of the Nationalist Congress Party (NCP). Nine candidates from the panel of Janardhan Patil and Nitin Patil were elected as Grampanchayat members and two candidates from the panel of Babasaheb Patil and Ganpati Patil were elected as Grampanchayat members. It appears that from the said panel of Babasaheb Patil and Ganpati Patil, one Sahadev Patil was elected as the Sarpanch and one Namdev Patil (original accused No. 3) was elected as the Deputy Sarpanch.

10 It appears that as the Deputy Sarpanch-Namdev Patil submitted his resignation, the post of Deputy Sarpanch fell vacant. As a result of the same, the election for the post of Deputy Sarpanch was to be held on 4th March 2021. From the panel of Babasaheb Patil and Ganpati Patil, Ganpati Namdev Patil himself had submitted his form for the post of Deputy Sarpanch. From the panel of Janardhan Patil (accused No.1) and Nitin Patil (accused No.2), one Sujit Vasant Patil (accused No. 4) had submitted his

form for the said post. The said election of the Deputy Sarpanch was hotly contested by both the panels. For the election, supporters and members of both the parties i.e. BJP and NCP as well as the villagers of Borgaon had gathered in large numbers of 300-400 in front of the Grampanchayat Building on the day of the election i.e. 4th March 2021.

11 On 4th March 2021 at about 1:45 p.m, Pandurang Janardhan Kale (deceased) alongwith Ganpati Patil, Kiran Patil, Amol Patil, Shrikant Patil, Rajesh Patil, Vasant Patil, Rahul Patil and about 30-40 other supporters came to the Grampanchayat for casting their vote. It is alleged that Prakash Vasant Patil (accused No. 13) approached Pandurang Janardhan Kale (deceased) and asked him why he was now supporting the opposite party i.e. BJP. It is alleged that at that time, Ganpati Patil tried to intervene and got into a verbal altercation with Prakash Patil (accused No. 13) and Namdev Patil (accused No. 3). When Namdev Patil tried explaining to Ganpati Patil not to interfere, it is alleged that Ganpati Patil lost his temper and instigated his supporters who were armed with sticks, to assault the supporters of Janardhan Patil and Nitin Patil. In the said incident, Pandurang Kale sustained injuries and later succumbed to same in the hospital. It is alleged that Ganpati Patil and some others were also injured in the said incident, however, only the injury certificate of Ganpati

Patil is produced. In the said incident, Prakash Patil (accused No. 13) and Tukaram Patil (accused No. 14) also sustained grievous injuries on vital parts of their body. Prakash Vasant Patil, a co-accused is also alleged to have suffered a severe head injury and was admitted in Vivekanand Hospital from 4th March 2021 till 12th March 2021. Prakash Vasant Patil has also lodged an FIR bearing C.R. No. 100/2021 with Kavathe Mahankal Police Station with respect to the said incident as against Ganpati Patil and 12 others and other 20 unknown persons for the alleged offences punishable under Sections 143, 147, 148, 149, 323, 326, 324, 504, 506 of the IPC and under Section 135 of the Maharashtra Police Act. The said FIR is dated 6th March 2021.

12 With respect to the said incident, Ankush Kale, brother of deceased-Pandurang Kale has also lodged an FIR, which is the subject matter of the application. According to the prosecution, in the present C.R., there were about 40 persons who were present, some of whom assaulted the deceased, Janardhan Patil and the injured-Ganpati Patil. Some of the said accused are alleged to have been armed with sticks, iron rods and hockey sticks. In the said case, most of the accused have been arrested. Some of the accused are also alleged to have assaulted with fist and kick blows and are stated to have hurled abuses.

13 As far as the present applicants i.e. applicant Nos. 3, 5 and 7 are concerned, admittedly, the said applicants, although present at the spot, are not alleged to have been armed with any weapon, nor are they alleged to have assaulted any of the injured, nor are they alleged to have hurled abuses or exhorted the other accused to commit the alleged offence. The said applicants although named by the first informant and other witnesses, are only stated to have been standing at the spot when the alleged incident took place. About 40 persons have been arraigned in the present C.R. The said applicants were present at the spot, as there were Grampanchayat elections to be held for the post of Deputy Sarpanch on that day.

14 As far as the submission of the learned counsel for the applicants that the incident took place at the spur of the moment, the same will be considered by the trial Court, at the time of trial. Although the pre-arrest bail of the said applicants was rejected by this Court and confirmed by the Apex Court, the Apex Court granted them two weeks' interim relief to surrender, so as to enable them to file an appropriate bail application before the concerned Court. The concerned Court was also directed to decide the bail application filed, expeditiously. The said applicants filed the bail application, however, their prayer for surrender and bail, both, were rejected.

15 Today, an application was filed by the said applicant Nos. 3, 5 and 7 for surrender, with a prayer that after taking them into custody, they be released on bail. Accordingly, the applicant Nos. 3, 5 and 7 surrendered before this Court and were taken into custody in terms of the judgment of the Apex Court in ***Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote & Ors.***².

16 Having heard learned counsel for the applicants and the learned A.P.P and having considered the material and the role of the applicants, the applicant Nos. 3, 5 and 7 have made out a case for grant of bail. Accordingly, the following order is passed :

ORDER

(i) Application is dismissed as withdrawn *qua* applicant Nos. 1, 2, 4, 6 and 8. The said applicants are at liberty to file an appropriate application for bail, before the appropriate Court.

(ii) If an application for bail is filed by the applicant Nos. 1, 2, 4, 6 and 8, the learned Judge to decide the same on its own merits, uninfluenced by the withdrawal of the application *qua* the said applicants;

2 (1980) 2 SCC 559

(iii) The applicant Nos. 3, 5 and 7 be released on cash bail in the sum of Rs. 20,000/- each, for a period of eight weeks, in connection with C.R. No. 98/2021 registered with the Kavathe Mahankal Police Station, Sangli;

(iv) The applicant Nos. 3, 5 and 7 shall furnish PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount, within a period of eight weeks of their release on cash bail, before the appropriate Court;

(v) The applicant Nos. 3, 5 and 7 shall inform their latest places of residence and mobile contact numbers 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;

(vi) The applicant Nos. 3, 5 and 7 to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vii) The applicant Nos. 3, 5 and 7 shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(viii) The applicant Nos. 3, 5 and 7 shall file an undertaking with regard to clauses (v) to (vii) in the trial Court, within two weeks of their release;

(ix) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant Nos. 3, 5 and 7's bail.

17 The application is accordingly disposed of in the aforesaid terms.

18 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.

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

REVATI MOHITE DERE, J.