

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.496 OF 2020

Bharat Rambhau Gaikwad

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. H.H. Ponda a/w. Mr. Mukesh Modi and Mr. Gaurav Chaubey,
for the Applicant.

Mrs. S.V. Sonavane, APP for the State.

API. Mr. R.J. Mane, Saswad police station, Pune present.

CORAM : N. J. JAMADAR, J.

DATE : JULY 31, 2021
(THROUGH VIDEO CONFERENCING)

P.C.:

1. The applicant who is arraigned for the offences punishable under sections 302, 307, 143, 145, 147, 148, 149 of Indian Penal Code, 1860 and section 3 read with 25 of Arms Act, 1878 for having committed murder of Santosh Dalvi (the deceased) and attempted to commit the murder of Sadhu Davli, the first informant and the father of the deceased, in prosecution of the common object of unlawful assembly formed by him and 14 co-accused, has preferred this application to enlarge him on bail.

2. The prosecution case, in brief, is as under:

The relations between the deceased Santosh and the accused Dadaso Katke (accused No. 1) and Dattatray Katke (accused No. 2) were inimical. On 31st July, 2018 the deceased was called by Dadaso Katke (accused No. 1) and Dattatray Katke (accused No. 2) at Marathi school at Bhiwari, Tal. Purandar, Dist. Pune. The first informant Sadhu Dalvi accompanied the deceased Santosh. When they reached in front of Chintamani Super Market, Dadaso Katke (accused No. 1) and Dattatray Katke (accused No. 2), Hemant Gaikwad (accused No. 4), the applicant Bharat Gaikwad (accused No. 3) and others formed an unlawful assembly. Dadaso Katke (accused No. 1), the applicant and Hemant Gaikwad (accused No. 4) pointed a country made revolver at the deceased. The first informant tried to snatch the revolver from Dadaso (accused No. 1). Thereupon, Dattatray (accused No. 2), the applicant and Hemant (accused No. 4) caught hold of the first informant. Balkrishna Gaikwad (accused No. 9) gave a blow by means of a hard object on the head of the first informant. Dadaso (accused No. 1) and Hemant (accused No. 4) fired at the deceased. The deceased fell down. Thereupon, the accused assaulted the deceased by means of big stones on his head and face. The deceased and the informant sustained grievous injuries.

They were shifted to hospital. The deceased was pronounced dead. The first informant lodged report on 1st August, 2018 while he was admitted at Dhanvatari hospital.

3. I have heard Mr. H.H. Ponda, learned senior advocate for the applicant and Mrs. Sonavane, learned APP for the State.

4. Mr. Ponda would urge that no role of assault was attributed to the applicant in the first information report lodged on 1st August, 2018. The applicant had neither assaulted the first informant nor the deceased. At the highest, the applicant had allegedly caught hold of the first informant. In fact, initially, the first informant had given the history of assault by unknown persons. In the statement, which were subsequently recorded under section 164 of Code of Criminal Procedure belatedly, the first informant alleged that chilly powder was thrown in his eyes and, thereafter, the applicant Bharat (accused No. 3) and others had assaulted him by fist and kick blows.

5. Mr. Ponda would further urge that the co-accused who allegedly threw chilly powder in the eyes of the deceased Santosh

and the first informant and assaulted the deceased have been enlarged on bail. The role attributed to the applicant is of relatively minor nature. To this end, the attention of the Court was invited to the orders passed by this Court whereby the co-accused Sanjana Gaikwad (accused No. 15), Shobha Katke (accused No. 14), Santosh Ghisre (accused No. 12), Shivaji Pawar (accused No. 13), Aadesh Pawar (accused No. 8), Mohan Gaikwad (accused No. 10), Mayur @ Mahesh Barade (accused No. 16) and Balkrishna Gaikwad (accused No. 9) have been released on bail. Mr. Ponda further urged that in few of the aforesaid orders this Court has recorded that the statements of independent witnesses recorded during the course of investigation indicate that the informant party was the aggressor. Hence, the applicant deserved to be enlarged on bail.

6. Mrs. Sonavane, learned APP, on the other hand, stoutly submitted that having regard to the grave nature of accusation, wherein the accused allegedly committed murder of the deceased and attempted to commit murder of the first informant the applicant is not entitled to be released on bail. The submissions on behalf of the applicant that no specific role of assault has been

attributed to the applicant was sought to be met by inviting the attention of the Court to the statement of witness, Santosh Patne recorded under section 164 of the Code to the effect that the applicant was one of the persons who had pointed a country made revolver on the person of the deceased Santosh, before the co-accused Shobha threw the chilly powder on the face of the deceased. In the face of the said statement, according to the learned APP, it can not be urged that no specific role has been attributed to the applicant.

7. I have carefully perused the report under section 173 of the Code and the documents annexed to it, especially the first information report, the supplementary statement of the first informant recorded on 3rd August, 2018 and the statement of the first informant and Mr. Sopan Patne, the alleged eye witness, recorded under section 164 of the Code on 16th October, 2018 and 17th October, 2018, respectively.

8. From the perusal of the first information report and the supplementary statement, it becomes evident that no role of assault either upon the first informant or the deceased was

attributed to the applicant Bharat. In the first information report, the first informant stated that the applicant was one of the persons who formed unlawful assembly along with Dadaso (accused No. 1) and Dattatray (accused No. 2) and was allegedly armed with a country made revolver and when the first informant attempted to snatch the revolver from Dadaso (accused No. 1), the applicant caught hold of him. The persons who allegedly done the deceased to death were Deepak Bhandvalkar (accused No. 7), Mayur Bhorade (accused No. 6), Akshay Gaikwad (accused No. 5) and Aadesh Pawar (accused No. 8). Whereas, in the supplementary statement, the first informant attributed the role of assault upon the deceased to Suresh Katake (accused No. 11), Shobha (accused No. 14), Santosh Ghisre (accused No. 12) and Sanjana Gaikwad (accused No. 15) as well. Mr. Ponda is justified in canvassing a submission that till the statement of the first informant, under section 164 of the Code, was recorded on 16th October, 2018, no role of assault was attributed to the applicant Bharat.

9. The statements of Akshay Limbore, Prashant Katke and Hanumant Katake recorded on 20th and 21st August, 2018 reveal

that the genesis of the occurrence was different than what has been alleged by the first informant and the witnesses, who allegedly were the members of the informant party. Whether the informant party was the aggressor is a matter for trial. However, at this juncture, it can be stated without risk of contravention that, the statements of these witnesses, in the least, give a counter version of the occurrence.

10. The learned APP attempted to salvage the position by banking upon the statement of Sopan Patne recorded under section 164 of the Code to the effect that before chilly powder was thrown in the eyes of the deceased Santosh by accused Shobha, Mohan Gaikwad, Hemant Gaikwad and the applicant Bharat had pointed revolvers at the deceased Santosh. Indisputably, no weapon has been recovered at the instance of the applicant. Even otherwise, Mohan Gaikwad (accused No. 10), to whom an identical role was attributed, has been released on bail by this Court by order dated 12th February, 2020 in Bail Application No. 1511 of 2019 (Coram: P.D. Naik, J.).

11. The situation which thus obtains is that, on the one hand,

no specific role of assault is attributed to the applicant in the first information report and the supplementary statement of the first informant. On the other hand, role attributed to the applicant in the statement of the first informant recorded under section 164 of the Code is that of giving first and kick blows to the first informant. The allegation of the applicant having been armed with country made revolver and pointed the same at the deceased is in the corridor of uncertainty. In any event Mohan Gaikwad (accused No. 10), who was attributed identical role, has been released on bail. So also, the accused who allegedly assaulted the deceased have been enlarged on bail. Thus, there is no justifiable reason not to exercise the discretion in favour of the applicant.

12. At this stage, learned APP prayed for imposing stringent conditions, including attendance at the concerned police station. The submission appears reasonable. Hence, the following order:

ORDER

a] The applicant Bharat Rambhau Gaikwad be released on bail on furnishing a P.R. Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount.

- b] The applicant shall attend the concerned police station on the first Saturday of every month between 10 am to 12 noon, until further orders.
- c] The applicant shall inform his latest place of residence and cellphone number, immediately after being released on bail, to the investigating officer and also the Court seized of the matter and shall intimate the change in residential address and cellphone number, whenever such changes occur.
- d] The applicant shall regularly attend the trial Court and cooperate in the expeditious conclusion of the trial.
- e] The applicant shall not tamper with the prosecution evidence or attempt to give threats or inducement to the first informant and any of the prosecution witnesses.
- f] In the event of two consecutive defaults in attending the police station or the trial Court or breach of any of the aforesaid conditions, the prosecution shall be at liberty to move for cancellation of bail.
- g] It is made clear that the observations made hereinabove are for the purpose of determination of entitlement for bail and the trial Court shall not be influenced by any of these observations while determining the guilt or otherwise of the accused.

- h] The application stands disposed of in the aforesaid terms.
- i] All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)