

Digitally
signed by
SHRADDHA
KAMLESH
TALEKAR
Date:
2021.11.08
15:35:03
+0530

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

CRIMINAL BAIL APPLICATION NO.540 OF 2020

Naresh Harichandra Mali ... Applicant/Accused
Versus
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1024 OF 2020
(FOR INTERVENTION)
IN
CRIMINAL BAIL APPLICATION NO.540 OF 2020**

Umesh Jayvant Patil ... Applicant/Intervener

In the matter between :

Naresh H. Mali ... Applicant/Accused
Versus
The State of Maharashtra ... Respondent

.....

Mr. Rao i/b Ms. Prachita P. Vare for the Applicant in B.A.
No.540 of 2020.

Mr. Prashant P. Raul for the Intervener.

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

.....

**CORAM : N.J. JAMADAR, J.
DATE : 30 OCTOBER 2021**

P.C. :

1. This bail application is preferred to enlarge the Applicant

on bail in connection with C.R. No.(I) 48 of 2018, registered with Revdanda Police Station for the offences punishable under Sections 302, 307, 324, 323, 506, 143, 147, 148, 149 of Indian Penal Code, 1860 (“Penal Code”) and section 135 read with 37(1)(3) of the Maharashtra Police Act, 1951.

2. The Applicant and the co-accused have been arraigned for having committed murder of Prakash Gaikar (the deceased), attempted to commit murder of Umesh Patil (the first informant) and Dharma Gaikar (the injured) and hurt to other injured in prosecution of the common object of the unlawfully assembly.

3. On 8 June 2018, the first informant Umesh lodged a report, while he was admitted in Civil Hospital, Alibaug, District Raigad, to the effect that on 7 June 2018, while he was on his way to the house of his maternal aunt Vaishali Bhure, the Applicant Naresh Mali-Accused No.1 and co-accused accosted him. The Applicant gave a blow by means of wooden log on his face. He rushed back to his home. Thereafter, he came towards the house

of Deepak Bhure alongwith his maternal uncle Prakash Gaikar ('the deceased') and maternal grand father Dharma Gaikar (injured) and others to question as why he was assaulted. While the informant party was about to question the accused, the applicant gave a blow by means a wooden log on the head of the deceased. The latter collapsed. The Applicant and the co-accused assaulted him and his grand father Dharma. When he rushed towards the house of his maternal aunt, to save himself, the Applicant and co-accused Deepak Bhure, Narayan Bhure chased him. Vasant Hirachand Bhure, who attempted to take the deceased Prakash and injured Dharma to hospital, in his car, was pulled out of the car and assaulted by the accused. Eventually, the injured were taken to hospital. However, Prakash was declared dead.

4. The Applicant came to be arrested. The learned Sessions Judge was persuaded to reject the bail application of the Applicant opining *inter alia* that a specific role has been attributed to the Applicant.

5. I have heard Mr. Rao, learned Counsel appearing for the Applicant, Mr. Prakash Raul, learned Counsel for the intervener-the first informant (I.A. No.1024 of 2020) and Mrs. S.V. Sonavane, learned APP for the State. With the assistance of learned Counsels for the parties, I have perused the report under Section 173 of the Criminal Procedure Code, 1973 and the documents annexed with it.

6. Mr. Rao, learned Counsel appearing for the Applicant would urge that out of ten accused, named by the first informant, two have been discharged and all the accused, except the Applicant, have been released on bail. The Applicant has been in custody since June 2018. The investigation is complete and charge-sheet has been filed. In this backdrop, according to Mr. Rao, the prayer of the Applicant to enlarge him on bail deserves to be granted.

7. Mr. Rao canvassed a further submission that the role of assault attributed to the Applicant, even if taken at

its face value, does not indicate that the act of the Applicant would fall within the dragnet of Section 300 of Penal Code. It was urged that so far as the deceased Prakash is concerned, the postmortem report indicates that the deceased had sustained a single head injury. There is material to indicate that the Applicant got enraged as the deceased used improper words. The quarrel broke out suddenly. There was no premeditation. In this view of the matter, according to Mr. Rao, the prosecution's case, as best, would fall within the ambit of exception 4 to Section 300 of the Penal Code. Since there was no intention to commit murder of the deceased, the offence would properly fall within the dragnet of Section 304 Part-II of the Penal Code. Thus, having regard to the period of incarceration of the Applicant as an under trial prisoner, the Applicant deserves to be released on bail, submitted Mr. Rao.

8. Per contra, Mrs. Sonavane, learned APP, stoutly submitted that the material on record not only indicates that the Applicant

had assaulted the deceased and the first informant, but also threatened and assaulted Vasant Bhure, who was attempting to take fatally injured deceased and Dharma to hospital. In the backdrop of sequence of events, the submissions on behalf of the Applicant that there was no premeditation and the case would fall within the ambit of exception 4 to Section 300 of the Penal Code, is not sustainable, submitted the learned APP. Inviting the attention of the court to the statements of witnesses recorded under Section 164 of the Code of Criminal Procedure, especially that of Dharma Gaikar, it was urged that there is overwhelming evidence against the Accused, who is the main assailant, and thus, the Applicant may not be released on bail.

9. From the perusal of the material on record, it appears that the Applicant has been attributed with the role of assault in three parts. First, there is a prelude to the main occurrence. The first informant Umesh Patil was initially assaulted by the Applicant, after the latter was accosted while he was on the way to the house of his maternal aunt Vaishali Vasant Bhure. At that

time, the Applicant allegedly gave a blow by means of a wooden log on the face of Umesh. In the second incident, which constitutes the core of the occurrence, the Applicant allegedly gave a blow by means of an iron rod on the head of the deceased, Prakash Gaikar, who and the others had come to question the Applicant and his associates for the alleged assault upon Umesh. In the said occurrence, the Applicant also allegedly assaulted Dharma Gaikar, the father of the deceased. Thirdly, when Umesh rushed towards the house of his maternal aunt Vaishali, the Applicant and his two associates, chased him armed with weapons. When Vasant Bhure, the maternal uncle of Umesh attempted to take injured Prakash and Dharma to hospital, in his Tata Indica car, the Applicant and his two associates pulled out Vasant Bhure from car and assaulted him, so as to prevent him from taking the injured to the hospital.

10. It is true that the postmortem report indicates that the deceased Prakash had sustained a single external injury, i.e. a large Hematoma over left cheek extending from the lateral border

of left orbit to border of mandible. The cause of the death was head injury causing intracranial hemorrhage. However, the totality of the circumstances and the subsequent events, as narrated above, cannot be lost sight of. It would be contextually relevant to note that there are injury certificates of Dharma Gaikar, Vasant Bhure and Umesh Patil, which *prima facie* lend support to their claim. Dharma Gaikar had suffered three grievous injuries. Umesh Patil had also suffered three grievous injuries, with fracture of left ulna and right radius. Vasant Bhure had also sustained two injuries, which were simple.

11. The situation which thus obtains is that the material on record indicates that the Applicant was armed with weapons during the course of prelude, core and sequel to the occurrence. This factor assumes significance, as it is the prosecution's case, that after the first incident of assault, the informant party went to question the accused and when Ashok Patil, Police Patil of the village, called upon both parties not to quarrel, the Applicant

allegedly threatened that he would also be assaulted. In his statement, Ashok Patil stated that while Prakash was questioning the accused party, the Applicant assaulted Prakash by means of iron rod and Prakash collapsed.

12. The facts that even after Prakash and Dharma fell on the ground, the Applicant and two of his associates, chased Umesh, who rushed towards the house of Vasant Bhure to save himself, and the Applicant and his two associates, after noticing Vasant making efforts to shift injured to hospital in his Indica car, pulled Vasant out of the car and assaulted him, cannot be said to be immaterial or inconsequential. This act and conduct on the part of the Applicant, *prima facie*, militates against the claim that the case would fall within the ambit of exception 4 to Section 300 of the Penal Code. Neither can it be said that the act was without any premeditation nor that the Applicant had not taken undue advantage or acted in a cruel or unusual manner. The fact that the person, who was attempting to take injured to hospital, was assaulted so as to prevent him from

taking injured to the hospital, underscores the state of mind of the Applicant.

13. Indeed, there is a discrepancy regarding nature of the weapon with which the applicant was armed. However, at this juncture, such discrepancy does not detract materially from the prosecution's case. In any event, the weapon of the offence, i.e. iron rod came to be recovered in pursuance of the discovery made by the Applicant.

14. In the totality of the circumstances, I am afraid to accede to the submissions on behalf of the Applicant. In the face of evidence on record, especially, the role of triple assault attributed to the Applicant, in my considered view, the Applicant does not deserve to be enlarged on bail, during the pendency of the trial. Hence, the application deserves to be rejected.

15. Thus, the following order :-

: O R D E R :

- (a) Bail Application stands rejected;
- (b) It is, however, clarified that the observations are confined to the consideration of prayers for bail and this court may not be understood to have expressed any opinion on the merits of the matter and the learned Sessions Judge shall determine the guilt of the Applicant and the co-accused, uninfluenced by any of the observations made hereinabove.

14 In view of the rejection of the bail application, Interim Application No.1024 of 2020 does not survive and accordingly stands disposed of.

(N.J. JAMADAR, J.)