

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.907 OF 2021
ALOGN WITH
INTERIM APPLICATION NO.807 OF 2021

1. Ravindra Ananda Mote]
2. Ramesh Babasaheb Mote,]
R/o. Dhangarwadi, Taluka – Khandala]
District Satara (Presently lodged in]
Kolhapur Jail).] ... Applicants

Versus

The State of Maharashtra] ... Respondents

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Mr. Niranjana Mundargi with Mr. Nilesh J. Mohite for the Applicant.

Mr. Piyush Toshnival for the Intervenor.

Mr. S.H. Yadav, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH JULY, 2021.

P.C:-

1. The Applicants being arraigned as Accused Nos.4 and 5 in

AJN

C.R. No.239 of 2019 and subsequently charge-sheeted in the said C.R. for the offences punishable under Sections 302, 326, 323, 143, 147, 148 and 149 read with Section 34 of the Indian Penal Code (“IPC”) and under Sections 4 and 25 of the Arms Act (“Arms Act”), has approached this Court seeking their release on bail. The submission advanced is that the Applicants are falsely implicated in the present crime and the prosecution has suppressed that Applicant No.1 - Ravindra Mote himself has filed C.R. No.240 of 2019 for the offences punishable under Sections 307, 324, 504, 506, 143, 147, 148 and 149 of the IPC and Sections 4 and 25 of the Arms Act against the Complainant and the deceased and Applicant No.1 himself is an injured and victim of the incident.

2. The C.R., in which the Applicants are arraigned as accused is registered on a complaint of one Yogesh, who alleged that on 25/11/2019, after having dinner at around 10.00 p.m., when he reached the square in front of Gram Panchayat, Dhangarwadi, Mayur Shivtare, Pravin Shivtare and Bunty Kadam, were waiting for him. At that time, Mayur told him that he received a telephone call from Aniket s/o. Makarand Mote at 6.00 p.m. and he was abusing him. Mayur, therefore, told them that they should question him and, therefore, the Complainant accompanied with Mayur, Pravin and Bunty on two separate motorcycles set out to the locality of Makarand Mote. In front of the house of Makarand Mote, Aniket and Ravi (A-1) were standing there. Mayur

questioned Aniket why he abused him on phone, to which Aniket responded that he is not resentful of his act and, he can do whatever he wants. At that time, Makarand Mote is alleged to have slapped Mayur, and as a reaction, Mayur caught hold of Makarand. Thereafter, Aniket is alleged to have caught hold of the father of the Complainant and rushed to the house and brought a sword, by which he gave a forceful blow to Mayur in his neck. Makarand went to his house and came with an iron rod and assaulted Mayur in his back. The Complainant also sustained injury on his head, when he attempted to intervene. It is alleged that the present two Applicants Ravi and Ramesh caught hold of Mayur when he was being assaulted. As a result of the blows, Mayur and the Complainant fell on the ground and Ketan is alleged to have assaulted them by kicks. The injured were taken to the hospital and Mayur succumbed to the injuries.

3. The advance death certificate opines the probable cause of death as death due to hemorrhagic shock due to chop wounds on neck with head injury. The postmortem report discloses presence of five chop wounds on deceased Mayur with CLW of 25 cm. x 2 cm over right temporal region with multiple hematoma. Fracture over right temporal bone is also recorded in column No.19 of the postmortem report. The sword, which was seized, when forwarded to the medical officer, he opined that the stab injuries/chop wounds are possible by the said weapon. Yogesh i.e. the Complainant

sustained a CLW of 1 x 0.5 x 1 cm. over left parietal region and blunt trauma on right knee. Both the injuries are simple in nature.

4. Six persons were arraigned as accused with the present Applicants as Accused Nos.5 and 6. They came to be arrested on 26/07/2019 and 27/11/2019 respectively. The charge-sheet compile statements of several witnesses, who speak in sync with the Complainant particularly, the statement of Pravin Shिवtare, Suraj @ Bunty Kadam and Vaibhav Shिवtare, who were present on the spot.

5. Mr. Mundargi, learned counsel for the Applicants, has invited my attention to the statement of one Dattatray Gaimude, driver/police naik, who alleged that at about 10.45 on the date of the incident, he was relieved from duty and, at 11.00 a.m., he received a call from Ravi Mote stating that many people have gathered in their locality and they are assaulting. The Station hawaldar also received a similar phone call and, therefore, six of the police officials present in the police station reached Motevasati, where Makarand Mote and his son Aniket, nephew Ravi and Mayur, brother Ramesh and other people were present. Lot of commotion was going on and, when inquired from Makarand Mote, he informed them that Mayur, Vaibhav, Pravin and Bunty, resident of Dhangarwadi and 5-6 people armed with sword, scythe, iron rod had assaulted them and Ravi Mote sustained injuries in his head and he was taken to hospital.

6. When they approached a little ahead, they saw Yogesh standing and one Mayur lying. They were immediately carried to the hospital. They gathered information that there was fight between the people present in the Motevasati and persons from Dhangarwadi.

7. Based on the said statement and similar statements of Kedari and Kolwadkar, Mr. Mundargi urged that it was the Complainant and his associates, who are the assailants and Applicant No.1 Ravi had sustained injury in the incident. The injury certificate of Ravi Mote is placed on record, which records three simple injuries, being CLW over right parital region, blunt trauma on shoulder, abrasion in little finger.

8. The occurrence of the incident is not in dispute and it is also not in dispute that one person Mayur lost his life in the incident since he was assaulted by Aniket and Makarand Mote. The Applicants' presence in the spot, at the time when the deceased and the Complainant were assaulted has also surfaced from the statements of the eye-witnesses and, while the deceased was being assaulted, the two Applicants are alleged to have caught hold of deceased Mayur. They are charged with the aid of Section 149 and are members of an unlawful assembly as defined under Section 141 of the IPC. A criminal act is attributed to the members of the assailants and, *prima facie*, it can be seen that the act done is in

prosecution of the common object of the unlawful assembly. Section 149 provides for vicarious liability and every person in the assembly, who at the time of committing that offence was member of that assembly is guilty of the offence committed. The role of the Applicants being clearly surfacing from the charge-sheet, merely because the simple injuries sustained by one of the Applicants in the assault, will not be sufficient to discredit the case of the prosecution.

9. As far as the relief sought in the Application is concerned, the Applicants and the rival group are at loggerheads and considering the nature of accusations levelled in the present C.R. and the counter C.R., being C.R. No.240 of 2019, the possibility of the Applicants again confronting with the opposite party on being released on bail, cannot be ruled out. Taking into the gravity of the allegations and the likelihood of the commission of offence by the Applicants, the Application deserves to be rejected and, is accordingly, rejected.

10. In view of the rejection of the Bail Application, Interim Application does not survive and is disposed of as such.

[SMT. BHARATI DANGRE, J.]