

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1136 of 2021

Namdeo Kisan Pagere & Anr	.. Applicants
Versus	
The State of Maharashtra	.. Respondents

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Mr. Manoj Mohite, Sr Advocate for the applicants.
Mr.Y.M. Nakhawa, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 28th JULY 2021.

P.C:-

1 By the present application, the two applicants seek their release on bail in connection with C.R.No. I-92 of 2020 registered with Wadiwhare Police station for the offence punishable under Section 302, 307, 143, 147, 148, 149, 323, 324, 504 and 506 and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act.

2 The complainant is one Sahebrao, an agriculturist, resident of Nandgaon, Budruk. He is the owner of Gut No.544 in Nandgaon, Budruk and he inform that on the left side of the Pachi bridge, there is a piece of barren land, which belongs to

Tilak

him. There is ongoing dispute about the same with one Namdeo Pagere (applicant no.1). On the measurement being carried out by the Government Surveyor, the land was recorded to the ownership of the complainant and therefore, it was decided by him to have a cow-dung plant set up there.

3 The complainant – Sahebrao report about an incident dated 23rd August 2020 when he called for a JCB for digging a pit in the barren land and the work commenced at 11'O clock in presence of himself and his brother. While the work was in progress, Ankush, son of applicant no.1, his mother and wife, arrived there by car and raised a row about the work. It is alleged that Ankush assaulted the complainant and his brother Sandeep on his back by means of a stick in his hand. After 10 to 15 minutes, it is alleged that his father Namdeo (applicant no.1) , Uncle Madhav (applicant no.2), Sachin and Satish arrived there and started hurling abuses and questioned them about their activity. It is alleged that all the persons started assaulting them by pulling out sticks from the stack of wood lying nearby to be used as fire wood. The complainant alleged that he and his brother were assaulted by Satish Swaraj and Madhav by means of sitck in head and on back. At that time his cousin brothers Suryabhan and Sampat arrived with one Arvind – his employee, and attempted to rescue, but they were also assaulted by the assailants. In the said assault, Sampat sustained grievous injury to

his head and he was taken to the hospital. Sampat is the deceased who succumbed to the injury and therefore, Section 302 was added to the crime.

4 During the course of investigation, statement of several eye witnesses were recorded, which include the brother of the complainant – Sandeep, who corroborate the version of the complainant and state that Ankush assaulted him and Sahebrao by means of a stick on his hand which caused injury to his right leg and blow landed in the head and back of Sahebrao. In sync with the complainant, he state that after 10 to 15 minutes, Madhav, Satish and Namdeo arrived there and his cousin brothers Sampat and Suryaban came to their rescue. Sandeep state that Satish Kishan Pagere assaulted Sampat by means of a wooden chip on the back side of the head, as a result of this blow, he fell down. Statement of Bhushan Pagere, Neelam Kokane, Archana Kokane, Arvind Yadav are on similar lines. Satish Kisan Pagere is alleged to have assaulted Sampat on his head.

Another independent person whose statement is compiled in the charge-sheet is Rohidas Gaikar who state that Satish gave a blow to Sampat by means of a chip of wood and he fell on the ground, unconscious.

5 Apart from the said set of witnesses, statements of four police personnels who happened to be accidentally present on the spot are also compiled in the charge-sheet. Police Havildar

Govind Singh state that a free fight was going on between Pagere and Kokane at 10.45 near Pachi bridge and assault was taking place by means of wooden logs. An attempt was made to separate them but none of them was ready to wane. Govind Singh re-iterate that Satish Kisan Pagere gave a blow to Sampat. The injured were taken to the hospital. Sham Vithal Sonawane also speak on similar lines.

6 The post mortem report of Sampat attribute the cause of death as 'Head Injury' and column no.7 record presence of wound over the frontal parietal temporal region of scalp and column no.19 record presence of hematoma over both fronto parie region of size 20 cm x 15 cm – red in colour. Sahebrao – the complainant sustained one contusion over parie tempo region and an injury to the right eye with contusion on left nastoid region, an abrasion toe on both legs. Head injury is described as grievous injury. Another injured Suryabhan sustained a grievous injury on high fronto parietal region.

7 The investigation is complete and charge-sheet is filed. Prima facie, the statements of the witnesses compiled in the charge-sheet along with the photographs placed on record reflect a free fight amongst the two families. The weapons used are the pieces of wood lying on the spot to be used as firewood. The present applicants as per the version of witnesses have arrived

after Ankush had assaulted the complainant and his brother Sandeep. Namdeo i.e. present applicant no.1 is alleged to have verbally abused. Madhav (applicant no.2) is alleged to have assaulted the complainant by means of a stick. All the witnesses speak in sync that Sampat was assaulted by Satish and he is thus responsible for his death. Undisputedly, since Section 149 has been invoked, the applicants may have to take the blame for causing death of the deceased provided common object is established by the prosecution.

8 Learned Senior Counsel Mr.Mohite inform that the applicants are ready to abide by any condition and he makes a statement that applicant no.1 is residing in Mumbai and therefore, he will not enter Nandgaon, Budrum, Taluka Igadpur, till the charge is framed, except for marking his attendance in police station. However, as far as the applicant no.2 is concerned, since he is in service, he shall remove himself from village Nandgaon, Budruk and stay in some other village.

Taking prima facie view compiled in the charge-sheet, the applicants are entitled to be released on bail considering their complicity in the said crime.

ORDER

- (a) The Applicant no.1 – Namdeo Pagere and applicant no.2 Madhav Pagere shall be released

on bail on furnishing P.R. bond to the extent of Rs.20,000/- each with one or two sureties of the like amount.

- (b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.
- (c) Applicant nos.1 and 2 are directed not to set their foot in village Nandgaon, Budruk, Taluka, Igatpuri, till filing of charge, except on the date when they attend the police station for marking their attendance.
- (d) The applicant nos.1 and 2 shall report to the police station once in two months till framing of charge and thereafter, as directed by the Sessions Court.

9 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J