

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1790 OF 2021

KISHOR RAMDAS PANSARE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Shirish Gupte i/b. Mr.Shailesh Chavan, Advocate for the Applicant.

Smt.PP.Shinde, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 17th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.36 of 2018 registered with Police Station Talegaon MIDC, Pune, for offences punishable under Section 302, 120B, 201, 143, 147, 148, 149 of the Indian Penal Code (IPC)., and under Section 4(25) of the Arms Act.

AVK

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2 On 28th March 2018, at about 8.35 p.m., informant and Roshan @ Dhampya @ Dnyaneshwar @ Balasaheb Hinge (deceased for short) were proceeding on a motorcycle towards Indori. According to prosecution, applicant was nursing grudge as his brother Nikhil Ramdas Pansare was killed by Akshay Mule, Aniket Ankush Dude, Atul Deepak Shinde from GT Boys group of which the informant and said deceased were members. The prosecution alleges that on account of that, the applicant gave a dash to informant's motorcycle from behind as a result of which he and the deceased fell down. Meantime, three other companions of the applicant came on motorcycle armed with sickle.

3 Informant and deceased out of fear then started running away towards the side of basti. However, they were chased by all including the applicant. The deceased was caught hold of and was assaulted by means of sickle on his head and face by them, and thereby killed him. The informant accordingly lodged First Information Report (FIR).

4 Mr.Shirish Gupte, learned senior counsel for the applicant, submits that the learned trial Court rejected the bail application on the ground that the applicant had given confessional statement as to his complicity in the offence under Section 27 of the Indian Evidence Act which according to learned senior counsel is not admissible under Section 25 of the Indian Evidence Act. The learned senior counsel then next submits that the role attributed to the present applicant in the FIR is not very much clear. The learned senior counsel has further pointed out that Chemical Analyzer's Report do not contain anything incriminating. He also invited my attention to the orders of bail pertaining to other accused. According to the learned senior counsel the investigation is over. Charge-sheet has been filed. No purpose would be served by keeping the applicant behind the bars.

5 Smt.PP.Shinde, learned APP, on the other hand, opposed the submissions by contending that the present applicant was one of the assailants who also had assaulted the

deceased by means of a sickle. Even recovery of sickle and his blood stained clothes were seized under the Recovery Panchnama pursuant to the statement given by him under Section 27 of the Evidence Act. The learned APP also invited my attention to discovery statements in order to substantiate her submissions. The learned APP also referred to postmortem report and strenuously submitted that there were in all 24 injuries on the body of the deceased. The nature of injury would go to show how brutally the deceased was killed. In view of this, the applicant does not deserve to be enlarged on bail, argued learned APP.

6 Perused the investigation papers. I have also gone through the postmortem report.

7 Perused the order dated 28th January 2021 passed by the learned Additional Sessions Judge, Pune. I am in agreement with the learned senior counsel for the applicant that the learned trial Court wrongly observed that there was confessional

statement of the applicant while giving his disclosure statement on 4th April 2018 under Section 27 of the Indian Evidence Act. It appears that the learned trial Judge is not aware of the ambit and scope of Section 27 of the Indian Evidence Act, otherwise he would not have made those observations.

8 Be that as it may, I would like to go through the other material on record which in my considered opinion is enough to point out the involvement of the applicant in the offence.

9 First of all, I may point it out from the FIR that after having dashed the motorcycle from behind by the applicant and when the informant and deceased fell on the road, the applicant was joined by two more persons. The applicant and other two were armed with sickle and they chased the informant and deceased who were running away from the spot. It is further seen that, however, the applicant and others were able to catch hold of the deceased and then all the three mounted assault on him by means of sickle. Herein comes the findings of

postmortem report dated 28th March 2018.

10 Column No.17 of the postmortem report shows that as many as 24 injuries were found on the person of deceased. Injury nos.1 to 17 and 24 were chopped wounds on the vital part of the body as given in the column whereas injury nos.18 to 20 were in the nature of abrasion on left arm and left shoulder. The cause of death according to postmortem report was “traumatic haemorrhagic shock due to multiple chopped wounds on face and scalp with fracture skull grievous injury to vital organ brain.” The nature of injury as noted above goes to show the manner of brutality in which the deceased was done to death.

11 It is further seen from the record that on 4th April 2018 the applicant gave a disclosure statement under Section 27 of the Indian Evidence Act and at his instance a blood stained sickle was seized. Similarly, he again gave a statement on 5th April 2018 and showed his willingness to show the canal in which he had thrown his clothes worn by him at the time of

incident. However, it appears that those clothes could not be recovered.

12 The learned senior counsel for the applicant has filed on record Chemical Analyzer's Report. The result of analysis shows that human blood was found on various articles including the clothes and sickle. However, the ABO grouping was inconclusive. It must be kept in mind that there was finding of human blood. All these findings can be co-related with the alleged act of applicant and others and it will be for the trial Court to look into it at the time of trial.

13 The learned senior counsel has also filed various bail orders in respect of accused Nirmal Jagtap, Pravin Marathe and Sachin Natak who are on enlarged on bail by the learned trial Court. It may be noted from these orders that the trial Court was not prima facie satisfied about the direct involvement of these accused in the assault of deceased, and therefore, they came to be released on bail.

14 I have already pointed out the role of present applicant which is very specific and vividly given by none other than the informant. At this stage, I have no reason to discard the contents of the FIR, as also the recovery of weapon.

15 Having regard to above, I am of the view that the applicant has failed to make out a case for bail. Hence, the following order :

ORDER

Application is rejected.

(V. G. BISHT, J.)