

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2351 OF 2021

VILAS PANDURANG GOGAVALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Patil a/w. Mr.Balwand Salunkhe i/b. Mr.Sunil Kadam,
Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 18th NOVEMBER 2021
PRONOUNCED ON : 29th NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure (Code) in Crime No.I-28 of 2020 registered with Police Station Poladpur, Raigad, for offences punishable under Section 302, 341, 143, 147, 148, 149, 120B, 188 of the Indian Penal Code

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(IPC). and Section 37(1)(a), 37(1)(c) and 135 of Maharashtra Police Act.

2 It is the case of prosecution that informant's father, namely, Ganpat Vishram Mandhare (since deceased) was a worker of Shivsena whereas the applicant and accused named in the First Information Report (FIR) are from Shetkari Kamgar Paksha. They did not like the deceased working for Shivsena and therefore, used to abuse and threaten to kill him. On the day of incident, the informant received a phone call from his maternal uncle asking him to reach home immediately and after reaching there he found the deceased in a pool of blood and had sustained injuries on his head. Accordingly, he lodged complaint against the applicant and other co-accused.

3 Mr.Kuldeep Patil, learned counsel for the applicant, submits that admittedly informant was not an eye witness and he only came to know through his maternal uncle about the incident. The learned counsel also invited my attention to the

statement of Deepak Raghunath Jadhav wherein two persons, namely, Vithal Pandurang Mhaske and Sakharam Vishram Mandhare approached the police station and confessed of having killed the deceased by means of sticks on his head. According to the learned counsel this statement cannot be taken into consideration. The learned counsel then invited my attention to Smitil Ganpat Mandhare – son of the deceased and assailed the statement by submitting that his statement is a general statement and full of vagueness. He further assailed the conduct of this witness by submitting that although this witness claims to have witnessed the incident but immediately did not approach the police station. The learned counsel then invited my attention to the statement of Paresh Ganpat Mhaske and pointed out inconsistencies between his statement and statement of Smitil Ganpat Mandhare.

4 The learned counsel then took me through postmortem report and pointed out that there were only four injuries. Having regard to the role of the applicant, the present

applicant deserves to be enlarged on bail, in as much as investigation is completed and charge-sheet has been filed.

5 Mr.Palkar, learned APP, on the other hand opposed the submissions and invited my attention to statement of Smitil Ganpat Mandhare and Paresh Ganpat Mhaske, who according to him are the eye witnesses. The learned APP also invited my attention to the statement of said Smitil Ganpat Mandhare recorded under Section 164 of the Code by learned Judicial Magistrate First Class, Mahad and also that of Paresh Ganesh Mhaske. The learned APP then pointed out from postmortem report that it was the head injury which was the cause of death. There being no merit in the application, it is liable to be rejected.

6 Perused the investigation papers including the FIR. Admittedly, the informant is not a eye witness to the incident. The prosecution has pressed into service the statement of only two witnesses, namely, Smitil Ganpat Mandhare and Paresh Ganesh Mhaske. The statement of Smitil Ganpat Mandhare who

is none other than the son of the deceased shows that on the day of incident, the accused Vithal Krishna Mhaske had given a blow of tile on the head of the deceased whereas the remaining accused including the present applicant were beating his father by means of stick and stone. While he was watching the incident and was abused by some of the assailants, he fled away. From the statement of this witness one thing is very much clear and that is that it was the accused, namely, Vithal Krishna Mhaske, who had given a blow of tile on the head of the deceased. As far as the remaining accused including the applicant are concerned, the role attributed to them is that they were assaulting by means of stick and stone. This is quite a general statement and it does not specify as to which part of the body of the deceased the applicant and other accused had assaulted. The postmortem report would show that there were four contused lacerated wounds. The only and possible serious injury was on the head as there were multiple fractures of skull bone. If the postmortem report is to be seen then the head injury can be attributed to the role of Vithal Krishna Mhaske.

7 Coming to the statement of Paresh Ganesh Mhaske it is seen that on the date of incident, at about 5.15 p.m., he saw deceased lying on the ground and was being assaulted by applicant and other accused. He also saw rest of the people running away. He further alleges that accused Vithal Krishna Mhaske came near him and threatened to kill him if he disclosed the incident to anybody and therefore, he went away from there. He also saw Smitil Ganpat Mandhare – son of the deceased following him. Interestingly, this witness nowhere says as to what weapon was used by accused including the applicant. He does not support the statement of Smitil Ganpat Mandhare on this count. Even he does not say that he had seen Smitil Ganpat Mandhare present on the spot. All that he says is that when he started running away, he also saw Smitil Ganpat Mandhare following him. It is also pertinent to note that the statement of Smitil Ganpat Mandhare under Section 164 of the Code was recorded by learned Judicial Magistrate First Class, Mahad on 5th June 2020 and in that statement, for the first time, he revealed that the applicant was armed with a stone.

8 Having regard to the material on record and the role of the applicant, in my considered opinion, the applicant has made out a case for bail. No criminal antecedents are brought to my notice. Hence, I pass the following order :

ORDER

- (i) Applicant – Vilas Pandurang Gogavale shall be released on bail in Crime No.I-28 of 2020 registered with Police Station Poladpur, Raigad, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the Court or to any Police Officer.
- (iv) The applicant shall attend the Court proceedings regularly.

- (v) Bail before the trial Court.
- (vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)