

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1312 OF 2020

Raju Shripat Kalgude

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Manoj Mohite, Sr. Advocate i/b Onkar Warange for the applicant.

Mr. Raviraj R. Parmane for the intervenor.

Mr. S.H. Yadav, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 27th JULY 2021

P.C:-

1 The applicant is charge-sheeted in C.R.No. I-28/2020 registered with Poladpur Police Station on 31st May 2020 for the offence punishable under Section 302, 241, 143, 147, 143, 147, 148, 188 and 120B along with Section 37(1)(a), 37(1)(c), 135 of Maharashtra Police Act. The applicant came to be arrested on 1st June 2020 in connection with the said crime in which the charge-sheet has been filed on 25th August 2020 against 9 accused persons. The applicant is charged as accused no.9.

2 Learned Senior Advocate Mr. Manoj Mohite has taken me through the material contained in the charge-sheet and he submit that the applicant is falsely implicated in the alleged offence on account of the political rivalry so as to settle the previous enmity and there is no material in the charge-sheet to charge him of the serious offence of murder. The falsity in the incident is criticized by the learned counsel by submitting that the FIR take name of 42 persons as accused, where the name of the applicant is conspicuously absent and is added by way of supplementary statement, whereas the charge-sheet is submitted only against nine persons. As regards the two eye witnesses, the submission of Mr. Mohite is that it is full of contradictions and omissions and will not stand the scrutiny of law. Taking into account the totality of circumstances, release of the applicant is sought.

3 Perused the material contained in the charge-sheet which charge Nine accused persons. The post mortem report record multiple fractures on skull bone of size 30 cm x 4 cm x 4 cm and injuries on eyebrow, nostril, lower lip and chin. In column no.17, two superficial linear parallel contusions on Epigastric 10 x 1 cm are noted. The column no.18 record brain substance oozing out of skull fracture. The spot panchnama reveal presence of blood stained wooden stick and at distance of 15 ft, one wooden stick and three bamboo sticks are found.

4 The C.R. came to be registered on the complaint lodged by the son of the deceased who admittedly is not an eye witness, but he was informed by his brother Smitil about the gruesome incident and when he reached the spot, the motor-cycle of deceased was found lying and his father profusely bleeding nearby. In the complaint, the informant report that his father as well as 10 – 20 households in the village were working for Shiv-Sena – political party, whereas 40 named persons were working for Shetkari Kamgar party and the work of his father was not approved by the said persons and it is therefore, they had threatened him at times. The informant had also addressed a letter for police protection and when the said persons were reprimanded in the police station, his father was assaulted by the named persons, but somehow he escaped unscathed. This incident had resulted into registration of an FIR. The informant also state that an offence came to be registered against him along with other persons of Shiv Sena under the Atrocities Act, which compelled them to be incarcerated for six days and the person who had acted as a surety when they were released on bail, was assaulted by the opposite gang.

5 Admittedly, when the informant raised accusation against 40 persons for assaulting his father, the name of the applicant is not included. However, immediately on the next date

i.e. 1st June 2020, the complainant got his supplementary statement recorded wherein he take name of the applicant as the person who was present amongst the persons who had assaulted his father and caused his death.

6 Apart from the said witnesses, statement of another son of deceased by name Smitil came to be recorded on the very day of incident i.e. 31st May 2020, where he state that he was accompanying his father on his own motor-cycle when he was assaulted. Smitil take name of 10 persons who were present near the *wada* of one Sitaram Mhaske which include the applicant and he allege that Vitthal Mhaske hit his father in the head by piece of tile (*farshi*) and other persons assaulted by stones and bamboo. He witnessed the entire assault and sensing that he is also likely to be attacked, ran away. He informed his brother Atul about the incident and he lodged a report naming 40 persons as assailants.

Apart from this, there is statement of one Paresh Ganpat Mhaske who has also witnessed the incident and name the applicant as one of the assailants who thereafter, fled the spot.

7 It is admitted position of law that FIR is not an encyclopedia and the statement of the complainant on the every next day of incident implicate the present applicant. Apart from this fact, the statement of Smitil is recorded on the day of incident itself and he named the applicant as one of the assailant who has

assaulted his father. On the spot, the wooden stick stained with blood have been recovered, which corroborate the version of Smitil.

8 Though the FIR has named 40 persons as assailant, the prosecution has sieved the material collected by them during investigation and charge-sheeted only 9 accused which include the applicant.

9 In the wake of the material contained in the charge-sheet which prima facie indict the present applicant, I am not inclined to grant relief to the applicant of being released on bail.

10 Application is rejected.

SMT. BHARATI DANGRE, J