

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1268 OF 2020

Bharat Waman Bhavar

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aamir Shaikh for applicant.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th March 2021

PC :

1. This is an application for bail under Section 439 of Cr.PC in connection with CR No.I-19 of 2020 registered with Bhiwandi Taluka Police Station, District Thane, for offences punishable under Sections 302, 324, 141, 143, 144, 147, 148 and 149 of Indian Penal Code. The applicant was arrested on 1st February 2020.

2. The FIR was lodged on 31st January 2020 by Anjum Nafis Qureshi. The complainant was informed that her husband Nafis was injured and admitted to hospital. She went to hospital. Nafis had sustained injuries. He was not in a position to speak. It was alleged that some boys present in the hospital informed that 7 to 8 unknown persons assaulted the victim by wooden log. FIR was lodged against unknown persons. During the course of investigation, it was revealed that the deceased, injured Akib and Amir were involved in theft of bullocks. The villagers upon learning that the victim and others are likely to commit theft of bullock, had chased them and assaulted. Applicant and other accused were arrested.

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3. Co-accused Kalpesh Patil and Nagesh Patil were granted bail by the Sessions Court. The application preferred by the applicant was however rejected by the Sessions Court.

4. Learned counsel for the applicant submits that there is no evidence against applicant. No specific role has been attributed to the applicant. Except the statement of Ganpat Kalya Kondhari dated 5th February 2020, there is no evidence against the applicant. The said witness has not attributed any specific overt act to the applicant. Statements of other witnesses indicate that they have referred to unknown persons having assaulted victim and injured. However, no test identification parade was conducted. There are no criminal antecedents against the applicant. There is no recovery from the applicant.

5. Learned APP submitted that the applicant has been named by Ganpat Kalya Kondhari. He has been attributed role of one of the persons amongst others causing damage to the vehicle, and participating in crime. It is submitted that several persons were involved in assaulting the deceased and other injured persons.

6. On perusal of statements, it appears that no specific overt act has been attributed to the applicant. Statement of Ganpat Kalya Kondhari does not indicate that he is eye witness to the incident of assault on the deceased. In his statement dated 5th February 2020, he has stated that on 30th January 2020, he heard people shouting that bullock thief have come and parked tempo for carrying bullock. Several people had gathered. He named applicant, Kalpesh Patil and Vishnu Valvi as present at Bhiwandi-Parol road. One bullock was tied to pick up. He gave information to police. One person was near

vehicle. He was assaulted by fist/kick blows. The villagers and accused ran into forest to chase thief. One Michael Jadhav told him that villagers are assaulting one unknown person by wooden log and fist/kick blows. Police Patil Kalya Pardhi came there. One injured person sustained head injury and other person was also assaulted. The first injured gave his name as Akib Ansari, the other injured was Amir Khan and injured who sustained head injury was Nafis Qureshi. He was taken to hospital. Nafis succumbed to injuries. Thus, Ganpat Kondhari was not eye witness to assault on Amir and Nafis. Ganpat Kondhari has not attributed any specific overt act to applicant when he saw him amongst villagers near the pick up. His statement was recorded on 5th February 2020. Statement of Michael was recorded on 5th February 2020. He stated that on 31st January 2020 at 12.30 hours, he saw Kalpesh Patil and others with wooden log causing damage to vehicle. One person was made to sit on ground. He saw some persons assaulting unknown person. He also saw another injured. The names of injured were Akib, Amir and Nafis. He has not named applicant as assailant. Statement of Vasant Pardhi do not refer to applicant. Amir Khan and Akib (injured) has not named assailants. He has not attributed any specific overt act to the applicant although there are statements on record, which indicate that unknown persons were involved in chasing the deceased and the injured person. The test identification parade memo is not on record. On perusal of the order passed by the Sessions Court granting bail to the co-accused and rejecting the application for bail preferred by the applicant, it is apparent that there is no reference to such parade being conducted. There is nothing on record to show that identification parade was conducted. I have perused the statement of Dhaval and Tejas Salvi. These witnesses have not

named the applicant as one of the person involved in the incident. However, they have referred the unknown person involved in the crime. Their statements are not fortified by identification parade. Even if statement of witnesses are accepted, there is no specific overt act to any person. Case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-19 of 2020 registered with Bhiwandi Taluka Police Station, District Thane, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Bhiwandi Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence.

8. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST