

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1187 OF 2020

1. Suresh Sonya Patkar, R/o.Vadanpada, Talasari, Palghar.	
2. Raghu Malya Patkar, R/o.Vadanpada, Talasari, Palghar.	Applicants
versus	
The State of Maharashtra	Respondent

WITH
BAIL APPLICATION NO.199 OF 2021

1. Manoj Kamlesh Wadhane, 2. Nitin Vansha Medha, 3. Shiwaji Babu Shingade, 4. Pralhad Suresh Patkar, 5. Damu Sonya Patkar, all r/o.Samba, Vadanpada, Talasari, Palghar.	
versus	
The State of Maharashtra	Applicants
	Respondents

Mr.S.V.Marwadi i/by Mr.N.M.Nadar for applicants in both applications.
Mr.Y.M.Nakhwa, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th March 2021

PC :

1. The applicants in Anticipatory Bail Application No.1178 of 2020 are apprehending arrest in connection with CR No.170 of 2020 registered with Talasari Police Station for offences under Sections 326 r/w 34 of Indian Penal Code, which was subsequently converted into Sections 302, 307, 143, 144, 147, 148, 149, 326, 323 and 34 of Indian Penal Code. The applicants in bail application are arrested in connection with same FIR and they are in custody.

2. The application for anticipatory bail and regular bail preferred by respective parties before Sessions Court were rejected.

3. The case of prosecution is that on 22nd July 2020 at about 10.00 am, the informant, her husband Dharma Dhapsa, her sons Ajit Dhapsa, Sunil Dhapsa and daughter-in-law Meena Dhapsa were farming in the land. Accused Suresh Patkar along with two other unknown persons came there and assaulted them with bamboo sticks. The informant fainted. The husband of the informant was taken to hospital. The FIR was lodged on 22nd July 2020. Supplementary statement was recorded on 30th July 2020. In the said statement the complainant stated that the land belongs to the informant's husband and accused Suresh Patkar was trying to encroach upon said land by using force. The complainant had also stated that along with Suresh Patkar, other persons namely Pralhad Patkar, Damu Patkar, Manoj Wadane and others had assaulted by sticks and iron rods. During the course of investigation some of the accused were arrested. Bamboo sticks were recovered from Manoj Wadane, Pralhad Patkar and Damu Patkar. During the course of investigation statements of other injured persons were recorded. The injured were treated at hospital. Their injury certificates were obtained. Dharma Dhapsa died on 11th August 2020. Subsequently offence was registered u/s 302 IPC. On completing investigation charge sheet is filed.

4. Learned counsel for applicants submitted that the applicants are falsely implicated in this case. The complainant and other witnesses have concocted the allegations to implicate all the accused in the crime. The FIR was registered against applicant no.1 and two

unknown persons. Other accused were not named. However, supplementary statement of the complainant was recorded on 30th July 2020. She referred to participation of Pralhad Patkar, Damu Patkar, Manoj Wadane as persons who were present and participated in the assault. The statements of other injured persons were recorded belatedly. The version of complainant is doubtful. Assuming that the case of prosecution to be true, the accused cannot be prosecuted for the offence under Sections 302 and 307 IPC. The FIR was registered u/s 326 of IPC and subsequently the grave offences were invoked without any evidence. The medical certificate of Dharma dated 22nd July 2020 refers to two simple injuries. After treatment he was at home. Subsequently he died on 11th August 2020. The post mortem report shows that death of deceased was due to pulmonary haemorrhage with haemothorax and sepsis leading to cardio-respiratory arrest causing death. The evidence of witnesses and medical evidence are unconnected. The dispute between the parties relates to plot of land which belongs to applicant no.1 Suresh Patkar and his name is reflected in 7/12 extract. He was assaulted by other side. On perusal of the injury certificate it is apparent that Ajit and Meena had sustained fractures and sticks were used. Even charge under Sections 326 and 307 cannot be attracted. The incident of assault had occurred on 22nd July 2020. The husband of complainant was discharged from hospital on 23rd July 2020. He expired on 11th August 2020. There is variation in the statements of witnesses recorded subsequently. The versions of eye witnesses are contrary to each other. There is no reason/explanation for belatedly recording statement of eye witnesses. The applicants in anticipatory bail application are falsely implicated. They are in custody for substantial period of time. Further detention is not required.

5. Learned APP submitted that reference to 77 days as reflected in P.M report is not correct and requisite corrections are made. The period stipulated therein is seven days. It is submitted that although the first informant has not named all the assailants in the FIR, she is aged lady. She was assaulted. She fainted. Apart from complainant, the deceased, the sons of the complainant and daughter-in-law were also assaulted. They had sustained several injuries. The deceased was assaulted with sticks and iron rod. He was brutally assaulted, which has resulted in his death. Section 302 IPC is attracted in this case. The questions raised by learned counsel for applicant are to be agitated at the time of trial. The applicant no.1 in ABA Mr.Suresh Patkar has been named in the FIR. He is the main accused. He is instrumental in assaulting the complainant and others. He was trying to encroach upon the property. Raghu Patkar who is applicant no.2 in the ABA, is also named as participant in crime. Hence application for anticipatory bail may be rejected. Their custodial interrogation is necessary. All the applicants in Bail Application have participated in the assault. The assault has resulted in death of the informant's husband. There is recovery of sticks from Manoj Wadane, Pralhad Patkar and Damu Patkar. The statements of Ajit Dhapsa, Meena Dhapsa and Sadu Kalangada and others shows that they are eye witnesses to the incident. Statement of Sunil Dhapsa attribute overt act to the applicants. Their statements were also recorded u/s 164 Cr.PC wherein the applicants are attributed overt act. The injury certificates of Dharma, Ajit, Meena and Rangu Dhapsa (informant) supports the prosecution case.

6. I have perused the FIR and other documents. The charge sheet has been filed against arrested accused. The first informant is wife of

the deceased. Her statement was recorded on 22nd July 2020. According to her, she was assaulted. She has named Suresh Patkar as the person who came to the spot of incident along with unknown persons and assaulted her husband, sons and daughter-in-law. She named Manoj Wadane, Nitin Medha, Shivaji Shingde, Pralhad Patkar and Damu Patkar in the FIR. However, her supplementary statement was recorded on 31st July 2020, wherein she had named several other accused. The statement of Ajit Dhapsa was recorded on 19th August 2020. The statement of Haresh Dhapsa was recorded on 10th August 2020. The statement of daughter-in-law of complainant was recorded on 18th August 2020. The statement of Sunil Dhapsa was recorded on 10th August 2020, and statement of Sadu Kalangada was recorded on 16th August 2020. The injured witness's statement was itself recorded belatedly. It is not clear whether they were not in a position to give their statements at the earlier point of time. The injury certificate of Dharma Dhapsa (deceased) refers to blunt trauma on head, neck and arm. Ajit had sustained CLW, swelling etc. He had sustained three grievous injuries and two simple injuries. Meena had also sustained two simple injuries and two grievous injuries which is evident from x-ray of elbow and right hand. The complainant had sustained blunt trauma and CLW whereas Sunil had sustained CLW and contusion.

7. The post mortem report indicate that cause of death of the deceased is pulmonary haemorrhage with haemothorax and sepsis leading to cardio-respiratory arrest causing death. The incident of assault is dated 22nd July 2020. The victim had died on 11th August 2020.

8. Thus, it is evident that the applicants who were arrested were named in the supplementary statement. The statement of the injured persons were recorded after some gap of time but they have named them and had stated that they had assaulted. Considering the factual matrix of the case, the role attributed to the accused, the post mortem report and the injury certificate, it is debatable whether Section 302 IPC would be attracted in this case. As far as applicants in Anticipatory Bail Application are concerned, the applicant Suresh Patkar has been named in the FIR. He has participated in assault. Applicant no.2 Raghu is also named by the witnesses subsequently and he has been attributed role of participating in the assault. They are yet to be arrested. Investigation qua these applicants in ABA is going on. Hence, no case for granting anticipatory bail to the applicants in ABA is made out. However, for the reasons stated hereinabove, the applicants in Bail Applications can be granted bail on certain conditions.

9. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application No.1178 of 2020 is rejected and disposed of;
- (ii) Bail Application No.199 of 2021 is allowed and disposed of;
- (iii) The applicants in Bail Application No.199 of 2021 are directed to be released on bail in connection with CR No. 170 of 2020 registered with Talasari Police Station, on their executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iv) The applicants in Bail Applicants shall report Talasari Police

Station once in a month on every first Saturday between 11 am and 1 pm for first six months, and thereafter once in every three months on first Saturday between 11 am and 1 pm till further orders;

(v) The applicants in Bail Application shall not tamper with evidence and shall not intimidate complainant and/or any other witnesses;

(vi) The applicants in Bail Application shall attend Trial Court regularly on the dates of hearing unless exempted by the Trial Court.

10. 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.)

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