

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.3201 OF 2019
WITH
INTERIM APPLICATION NO.1272 OF 2019**

- 1) Gajya Alias Palande Saban Bhosale; and
2) Luchya Saban Bhosale .. Applicants

Versus

State of Maharashtra .. Respondent

.....

Mr.Satyam Nimbalkar i/b. Mr.Pranav P. Pokale, Advocate for the Applicants in BA.

Mr.Ranjeet M. Pawar, Advocate for the Applicants in IA.

Mr.S.R. Agarkar, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 31, 2021.

P.C. :

This is an application for bail in connection with C.R.No.366 of 2019, registered with Daund Police Station, Pune, for the offences punishable under Sections 143, 147, 148, 149, 302 and 307 of Indian Penal Code (“IPC”, for short). The applicants were arrested on 29th June, 2019.

2 The case of the prosecution is that on 22nd June, 2019, the son of maternal uncle of the complainant had visited his house. He stayed over in the night. On 23rd June, 2019 at about 08:30 a.m., the complainant and his cousin went to lake for taking bath. They halted in between as the cousin of the complainant wanted to answer nature's call. He went to some distance and the complainant was waiting near the motorcycle. The complainant heard shouts of his cousin, and, went to the spot. He found that 8 to 9 persons were assaulting his cousin Balveer Rohidas Bhosle with fist/kick blows, axe and knife. Since the complainant shouted, they attacked him with axe and knife. The complainant inquired with his cousin about the identity of the persons who assaulted them and the reason for assault. The victim informed that the assailants were Pandya Soma Kale, Babya Pandya Kale, Shenya Pandya Kale, Nilya Pandya Kale, Gajya Sabnya Bhosale and Luchya Sabnya Bhosale, residents of Shreegonda, District-Ahmednagar and Raja Shirkaya Chavan, who is resident of Khorwadi, Taluka Dound, District-Pune. He also stated that the assault was on account of previous quarrel. Complainant then gave call to his brother Sudam Chavan and informed him about the incident. Thereafter, Sudam took the complainant, on his motorcycle and cousin Balveer was taken in injured condition by

Sudhakar Kondkya Chavan and Kondkya Ravnya Chavan on motorcycle to Khavte hospital, Dound. On examining him, the doctors declared that he is dead. The incident had occurred near Mergalwadi canal at 08:40 a.m. First Information Report ("FIR", for short) was lodged on 23rd June, 2019, at about 17:52 p.m. During the course of investigation, statements of witnesses were recorded. Investigation was completed and charge-sheet was filed. Thereafter test identification parade was conducted on 2nd March, 2020.

3 The applicants had preferred an application for bail before the Court of Sessions which was rejected, vide order dated 19th October, 2019.

4 Learned counsel for the applicants submitted that the applicants are falsely implicated in this case. The version of the complainant is false. On account of previous enmity, the names of the applicants were shown in the FIR. There is delay in lodging the FIR. Although it is alleged that the victim was taken to Khavte hospital, the medical case papers of that hospital are not produced on record. The FIR has been lodged late in the evening. Inquest panchanama was conducted at about 6:00 p.m. Except the complainant, there is no eye witness to the incident. The

allegation that the deceased had made dying declaration immediately after the incident, is concocted. Test identification parade was conducted after about eight months after the incident. Statements of witnesses are stereotype. Undisputedly, it is the case of the prosecution that there is enmity between the accused and the father of the deceased. There is no explanation as to why the FIR was registered belatedly. Two accused, namely, Babu @ Babya Pandya Kale and Sharad @ Shenyaa Pandya Kale were granted anticipatory bail by this Court vide order dated 3rd February, 2020, on the ground that their presence at the place of incident is doubtful. There is every possibility that the applicants are falsely implicated in this case. While conducting test identification parade, the rules/norms for conducting such parade were not followed. The applicants are in custody for a period of about two years. Statement of the complainant is vague. He does not attribute any specific overtact to accused. No weapons were recovered from the applicant. There is no incriminating evidence in the form of blood stained cloths or any recovery from applicants.

5 Learned APP submitted that there is direct evidence against the applicants. They are named in the FIR. The victim has made oral statement to the complainant giving the names of the

assailants, which has to be treated as dying declaration. There is no reason to disbelieve the said statement. Applicants are identified in test identification parade. The complainant was also injured and his statement was recorded while he was hospitalized for treatment. The discrepancies urged by the learned counsel for the applicants cannot be considered at this stage. The co-accused were granted anticipatory bail on a different ground and the applicants cannot claim parity. There was enmity between the accused and family of the deceased, which is the cause of the incident. The FIR was lodged on the day of incident. There is sufficient evidence to show involvement of the applicants.

6 Learned counsel for the complainant submitted that the names of the accused are reflected in the FIR. There was immediate disclosure about the involvement of the applicants to the complainant by the deceased. The dying declaration cannot be discarded. The victim was taken to the hospital and the FIR itself makes it clear that he was examined and declared dead by the doctors. Hence, there cannot be medical case papers regarding examination of victim of Khavte hospital. The complainant has identified the applicants in the test identification parade. There is no reason to disbelieve the version of the complainant who is the injured eye witnesses to the incident.

The weapons were recovered from the spot. The offences are registered under Sections 302 and 307 of IPC. The assault is on account of enmity.

7 The FIR was lodged by the injured on 23rd June, 2019. The FIR discloses that the incident had occurred at about 08:40 a.m. The deceased was attacked by 8 to 9 assailants. They were unknown to the complainant. It is the case of the complainant that their names were disclosed by the deceased. The reason for assault was also disclosed by him. Although the incident had occurred at about 08:40 a.m., the FIR was lodged at 17:52 p.m. The inquest panchanama was recorded at 06:00 p.m., in the presence of the father of the victim. It was recorded at District hospital, Daund. It is not clear as to why the FIR was recorded in the evening. The complainant was treated at Kulkarni Medical Foundations, Pyramid hospital for the injuries sustained by him. The medical case papers of Pyramid Hospital produced by prosecution mentions that complainant had sustained CLW over buttocks and CLW on forearm with contamination and bleeding. The time of complainant's admission in the hospital is not mentioned. It is not clear, whether this document forms part of charge-sheet. Details as to treatment of complainant, whether he was admitted as indoor patient and date of his discharge are not

reflected on certificate. The prosecution has not explained, why the complainant was not taken to Government hospital for treatment. The nature of injuries does not indicate that the complainant was not in a position to give his statement to the police immediately after the incident. The age of the injury reflected in the medical case paper of the complainant indicate that it was fresh and its age is approximately six hours before his examination. Thus, it appears that the complainant was examined somewhere in the afternoon around 03:00 p.m., considering the fact that the incident had occurred at about 08:40 a.m. Thus, the question which has arose for consideration is as to why the FIR was registered late in the evening. According to the complainant, the names of the assailants were disclosed to him immediately after the incident. The names of the assailants disclosed by victim are reflected in the FIR. So it is difficult to digest that the injured would remember the names of unknown persons which were disclosed to him in the morning by victim, while recording the FIR in the evening. The names recorded in FIR were Pandya Soma Kamble, Babya Pandya Kale, Shenya Pandya Kale, Nilya Pandya Kale, Ganjya Sabaya Bhosale, Luchya Sabnya Bhosale all residents of Shrigonda, District-Ahmednagar and Rajya Shirkya Chavan residing near Sugar factory Khorwadi, Taluka Daund,

District-Pune. These details would indicate, that possibility of deliberation with family of victim cannot be ruled out. It is pertinent to note that incident had occurred at 08:40 a.m. and FIR was registered at 05:52 p.m. Information was received by police at 05:36 p.m. The case of prosecution is that father of deceased Rohidas Bhosle is maternal uncle of complainant. There is enmity between Pandya Kale and Rohidas Bhosle. Smt.Latabai Kondkya Chavan in her statement dated 23rd June, 2019, has stated that, there are differences between her brother Rohidas Bhosle (father of victim) and Pandya Soma Kale. Babya Kale, Shenya Kale, Nilya Kale are sons of Pandya Kale. After the incident, victim was taken to Khavte hospital in injured condition, and, her son (complainant) was taken to hospital of Dr.Kulkarni and admitted for treatment. Thus, this witness has alleged about enmity between Pandya Kale and Rohidas Bhosle. Her statement is recorded after FIR is lodged. It is also pertinent to note that the co-accused Babu @ Babya Kale and Sharad @ Shenya Pandya Kale were also implicated as accused in the present case. Their application for anticipatory bail was allowed by this Court vide order dated 3rd February, 2020. The contention of said applicants was that, they could not be present at place of incident. They were at Shrigonda, District-Ahmednagar. They were assaulted in

an incident which had occurred on 21st June, 2019, at 06:00 a.m. FIR No.606 of 2019 in that regard was lodged on 21st June, 2019 with Shrigonda police station, for offences under Sections 143, 147, 148, 149, 324, 326, 323, 504 and 506 of IPC. They were initially treated at Rural hospital Shrigonda and than admitted at District hospital, Ahmednagar on 22nd June, 2019 at 12:15 p.m. and discharged on 26th June, 2019. Thus, there presence at scene of offence on 23rd June, 2019 at 08:30 a.m. is ruled out. While allowing the said application, it was observed that the medical certificates issued by the District Hospital Ahmednagar, show that they were admitted on 22nd June, 2019 and discharged on 26th June, 2019. The certificates also mention history of assault and blunt trauma on chest and neck. They were treated in Rural Hospital Shirigonda on 21st June, 2019. It is not the case of the prosecution that the certificates were fabricated. The said accused were residents of Shrigonda, District-Ahmednagar. On perusal of the FIR, it can be seen that no specific overtact is attributed to the accused. The allegation is that all of them had assaulted with weapons. The weapons were allegedly found at the place of incident. There is no other incriminating evidence in the nature of discovery, recovery or blood stained clothes from the applicants. It is pertinent to note that the statements of Sudhakar

Chavan, Kondkya Chavan and Sudam Chavan were recorded on 23rd June, 2019. According to the complainant, they were called by him after the incident. Their statements are identical. Sudhakar Chavan has stated that, there was enmity between Pandya Kale family and Rohidas Bhosle. Daughter-in-law of Rohidas Najuka Dheeraj Bhosle had lodged complaint against Pandya Kale and his relatives at Shrigonda police station. He reached the spot of incident in this case after call made by complainant. His brother Sudam took Jokyi (complainant) on his motorcycle and he and Kondkya took Balvir (deceased) in an injured condition to Khavte hospital, Daund. He was examined and declared dead. He did not state that victim (Balvir) had disclosed to him names of assailants. He has stated that victim was taken in injured condition. Complainant was taken to separate hospital of Dr.Kulkarni. At what time victim was declared dead is mystery, since there are no medical papers or medico-legal documents on record. At what time complainant was admitted in Dr.Kulkarni's hospital is also not disclosed. Statement of Sudam Chavan is similar. Apparently, it is copy paste, since his statement mentions that Sudam (the witness himself) took Jokyi (complainant) on his motorcycle to hospital. Statement of Kondkya Chavan is also identical. These witnesses were aware

about enmity as stated above, and, after discussion with complainant and others implication of accused, cannot be ruled out. The Khavte hospital is situated at Daund. Dr.Kulkarni's hospital (Pyramid) is also situated at Daund. Why incident is reported to police at 17:36 p.m. is moot question. Enmity is double edged weapon. The contention of applicants is that they are implicated on account of enmity. The test identification parade relied upon by the prosecution was conducted after a period of eight months on 2nd March,2020. The letter to hold parade was issued to Nayab Tahasildar by Daund police belatedly on 25th December, 2019. The applicants are in custody for two years. Considering all these circumstances, further detention of the applicant is not necessary and case for grant of bail is made out.

:: ORDER ::

- (i) Bail Application No.3201 of 2019, is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.366 of 2019, registered with Daund Police Station, Pune, on executing P.R. Bond in the sum of Rs.25,000/-, each, with one or more local sureties in the like amount;

- (iii) Applicants shall not tamper with the prosecution evidence. They shall not approach the complainant;
- (iv) Applicants shall report concerned police station once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (v) Applicants are permitted to furnish cash bail in the sum of Rs.25,000/-, each, for a period of eight weeks, in lieu of surety;
- (vi) Bail Application No.3201 of 2019, stands disposed of accordingly;
- (vii) Interim Application No.1272 of 2019, disposed of.

(PRAKASH D. NAIK, J.)