

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO. 120/2021.

Sajan Moujilal Sawalkar and three others.

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri D.S. Khushlani, Advocate for Applicants.
Ms. N.P. Mehta, A.P.P. for Respondent.

CORAM : VINAY JOSHI, J.

DATE : MARCH 17, 2021.

Heard learned Counsel for the parties through video conference.

2. Police of Dharni Police Station, District Amravati have registered a Crime bearing Crime No. 377/2020, relating to an offence punishable under Sections 302, 307, 147, 148, 149, 188 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, in which total 17 accused came to be arrested. Out of them, present applicants [1] Sajan Moujilal Sawalkar, [2] Deepak Motilal Kasdekar, [3] Sawan Shamrao Dhande and [4] Sandip Shamrao Dhande have approached to this Court for grant of regular bail,

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since their regular bail application was rejected by the Sessions Court vide order dated 27.01.2021.

3. The entire controversy evolved out of a trite property dispute in between the parties. It is the prosecution case that one month preceding to the occurrence, applicants and others have threatened to the informant party on account of a land dispute. On 07.07.2020, around 11.30 a.m., while the informant Shivprasad Zapula Chimote along with his family members was working in the field, in all 17 assailants [including the present applicants], arrived on the spot with deadly weapons. All of them indiscriminately assaulted the informant party by means of spear, axe and sticks in which two persons namely Zopula and Rupla died, whilst six got injured.

4. On the very day Shivprasad lodged report with the police on the basis of which a crime was registered and the matter was investigated. Incriminating articles were seized at the instance of some of the co-accused. Statements of injured were initially recorded in the form of dying declaration. Later on the police recorded statements of injured and eye witnesses. After completion of the investigation, charge sheet came to be filed.

5. Some attempts were made to secure bail before the

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Sessions Court prior to the filing of the charge sheet and post charge sheet, but, the same remained unsuccessful. This Court vide order dated 21.12.2020 in Criminal Application (BA) No. 1141/2020, has released three female accused on bail. Particularly, bail application No. 2/2021 of the present applicants, after charge sheet, was rejected by the Sessions Court vide order dated 27.01.2021. In such a background, this bail application has been filed with a prayer to release the applicants on bail during trial.

6. The learned Counsel for applicants would submit that there is no specific role attributed to either of the applicant. The weapons allegedly used by these applicants were merely sticks. According to him general allegations are leveled against the applicants which are not sufficient to curtail their liberty. It is argued that the allegation against the applicant no.1 Sajan is of beating injured Santosh by means of stick. However, Santosh has been discharged from the hospital long back. Moreover the bail is claimed on the ground of parity by inviting attention towards the orders of this Court dated 21.12.2020, in which three female accused were released.

7. Per contra, the learned A.P.P. put strong resistance for release of applicants on bail. It is pointed out that a gruesome

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attack took lives of two persons, whilst six were badly injured. According to the prosecution, it was a pre-meditated attack wherein deadly weapons were freely used. Moreover, it is submitted that the applicants along with other co-accused have formed unlawful assembly and therefore, all of them are responsible for the consequence of the act.

8. With the assistance of both sides, statement of informant, other injured persons, medico legal certificates, post mortem notes and seizure panchnama were gone into. The statement of all injured were on similar line. The informant Shivprasad has narrated the incident by stating that on the date of occurrence around 11.30 a.m. in all 17 named assailants along with other 4-5 persons arrived at the spot. They were armed with spear, axe and sticks. Co-accused Shyamlal and Nandlal instigated all of them to assault the informant party. The informant stated about the role of co-accused Shyamlal, Nandlal and Ramlal with certain particulars. So far as applicant no.1 – Sajan is concerned, the informant stated that, Sajan along with two others had assaulted Santosh by means of stick at his legs, lumber region and both hands. As regards to rest of the applicants is concern, it is alleged that they assaulted by means of fist-blows, kicks and sticks.

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9. True the horrifying incident took life of two and left several injured, however, that cannot be a sole criteria for denying bail. Case of each of the accused has to be assessed independently on the basis of given facts. Undoubtedly, if an offence is committed by any member of a unlawful assembly in prosecution of the common object of that assembly, then every member of the assembly is liable, as if he has committed the offence. At this juncture, one cannot prejudge that there was unlawful assembly and some of the members of the said assembly have acted in prosecution of the common object of the assembly. Moreover, before trial it would be not safe to conclude that the members of that assembly were aware about the common object and the offence was likely to be committed by members of such assembly.

10. The statement of informant and all injured were almost the same. Everyone has stated about the deadly assault by the co-accused and particularly about applicant no.1 Sajan that he along with Manoj and Sunita assaulted Santosh by means of stick on particular part of his body. Contextually I have gone through the statement of Santosh recorded as a dying declaration which has now become a prior statement, and his subsequent statement dated

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05.08.2020, recorded by the police during the course of investigation. Injured Santosh has specifically stated that Sajan dealt repeated stick blows at his legs, lumber and both hands causing him severe injuries. Merely because Santosh has been discharged from the hospital, that alone is not the parameter to decide the fate of Santosh's claim. All the witnesses as well as the injured Santosh has specified his role. Though accused no.1 Sajan has also claimed bail on the rule of parity, he is not entitled since the parameters for female accused are quite different. In view of the clinching material against accused no.1 Sajan, he is not entitled for bail.

11. As regards to applicant no.2 Deepak, applicant no.3 Sawan and applicant no.4 Sandip are concerned, the informant Shivprasad as well as rest of the witnesses stated that, at the time of occurrence they arrived on the spot along with other co-accused. Infact all of them have stated in one voice that total 17 named assailants along with 4-5 persons arrived on the spot. In other words, names of applicant no. 2 to 4 has been stated by all of them about their presence on the spot. However, besides that there are no specific allegations against applicant nos. 2 to 4. On close examination of their statements it reveals that there is omnibus

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statement that besides particular assailant, rest of the assailants beaten by fist blows, kicks and sticks. Pertinent to note that the witnesses have stated specific role of some of the accused, but, nothing specific has been stated about applicant nos. 2 to 4. One can find that while concluding, the witnesses have stated that other assailants have beaten by fist blows, kicks and sticks. There is no mention that as to whom the other assailants beaten. Likewise there are no particulars as to which other assailant beaten by fist blows, kicks or sticks. Having regard to the nature of general allegations against applicant nos. 2 to 4, it would not be appropriate to keep them behind bars for indefinite period. Investigation is already completed and charge sheet has been filed. There is no material to show that incriminating articles were seized from applicant nos. 2 to 4. Considering the nature of accusation and available material, applicant nos. 2 to 4 are entitled for grant of bail. In view of above, following order is passed.

ORDER

- (i) Criminal Application is partly allowed.
- (ii) Bail application as regards to Applicant No. 1- Sajan Moujilal Sawalkar, stands rejected.

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- (iii) Applicant No. 2- Deepak Motilal Kasdekar, Applicant No.3 - Sawan Shamrao Dhande and Applicant No.4- Sandip Shamrao Dhande are released on bail on their furnishing P.R. Bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount.
- (iv) Applicant Nos. 2 to 4 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence.
- (v) Applicant Nos. 2 to 4 shall provide their residential address and cell number to concerned Investigating Officer and shall not change their place of residence without prior intimation to the concerned Investigating Officer.
- (vi) Criminal Application is disposed of accordingly.

JUDGE

Rgd.

**Rakesh
Dhuriya**
Digitally signed
by Rakesh
Dhuriya
Date:
2021.03.19
11:49:06 +0530