

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.128 OF 2019

Annasaheb s/o Kisan Pawar
Versus

... Applicant

1. Ganesh s/o Bandu Pawar
2. Navnath s/o Bandu Pawar
3. Sahebrao s/o Rama Pawar
4. The State of Maharashtra

... Respondents

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Mr. N. B. Narwade, Advocate for applicant.

Mr. R. S. Shinde, Advocate for Respondent Nos.1 to 3.

Mr. N. T. Bhagat, APP for the respondent No.4 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10.02.2022

ORDER :-

. Present application has been filed under Section 439(2) of the Code of Criminal Procedure to challenge the order of granting regular bail in Crime No.118 of 2019 in Criminal Miscellaneous Application No.445 of 2019 by learned Additional Sessions Judge, Beed on 31.08.2019 to the respondent Nos.1 to 3. Respondent Nos.1 to 3 were arrested in connection with the said crime for the offences punishable under Sections 302, 307, 324, 143, 147, 148, 149, 323, 504 of Indian Penal Code.

2. Heard learned Advocate Mr. N. B. Narwade for the applicant, learned Advocate Mr. R. S. Shinde for respondent Nos.1 to 3 and learned APP Mr. N. T. Bhagat for respondent No.4 – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant lodged FIR at about 1.15 a.m. on 30.06.2019, whereas the cross complaint was registered vide Crime No.119 of 2019 with the said Police Station i.e. Talwada Police Station at about 1.39 a.m. on the same day i.e. 30.06.2019 for the offences punishable under Sections 326, 143, 147, 148, 149, 324, 323, 504 of Indian Penal Code. It is to be noted that in both the cases it was stated that the incident had taken place at about 11.30 a.m. on 28.06.2019. Therefore, ground of delay in lodging the report could not have been in favour of the respondent Nos.1 to 3. The learned Additional Sessions Judge has not taken note of the injuries and the evidence collected. Though initially the FIR was under Section 307 and other Sections of Indian Penal Code, but the injured Kisan Gema Pawar expired on 05.07.2019 at about 6.45 a.m. at MGM Hospital, Aurangabad and while granting bail, that postmortem report was available before the learned Additional Sessions Judge. The postmortem report clearly stated that he died due to head injury and his age was 80 years. The learned Advocate appearing for the applicant has produced the copy of the charge-sheet and submitted that the

postmortem report shows that there were about 11 surface wounds to Kisan Pawar and there were corresponding injuries mentioned in column No.19. All those injuries were stated to be antemortem and fresh. The learned Additional Sessions Judge observed that the statements of the witnesses show *prima facie* that blows by means of axe are not given by the applicants before him. Deceased was old person and in the report and statements of witnesses, no one has stated specifically, who had caused vital injury to deceased Kisan. According to his observation, Kisan was beaten by kicks and fist blows. It was then further observed that no specific allegations against the specific accused is there to show that those applicants before him had beaten deceased Kisan. These observations are wrong. He had not taken note of statement of witness Babasaheb Kisan Pawar dated 08.07.2019. That means, it was recorded before the bail order. Babasaheb is the eye witness and son of deceased Kisan. He has stated that he was also assaulted by the present applicant and when his father came to rescue, he was assaulted by Navnath by Tambi (Tommy). He has further stated that those blows were given on head, hand, back and chest causing him grievous injury and he expired while under treatment at MGM Hospital, Aurangabad. He has also pointed out statements of Ushabai Pawar, Ashabai Pawar, which are taken prior to the bail order. Therefore, the concerned judge had not

considered the record and appears to have made wrong observations in the order. The applicants ought not to have been granted bail.

4. Per contra, the learned Advocate for respondent Nos.1 to 3 supported the impugned order and submitted that the statements of other witnesses would show that they were not specific in stating who had assaulted whom. It appears that entire account of the statements of witnesses was taken by the learned Additional Sessions Judge. No extraordinary circumstance is pointed out to cancel the bail.

5. At the outset, it is to be noted that the bail that was granted by the learned Additional Sessions Judge to respondent Nos.1 to 3 was under Section 439 of the Code of Criminal Procedure. It indicates that the investigating authority had every opportunity to interrogate respondent Nos.1 to 3. Perusal of the FIR lodged by present applicant would show that he has given names of 8 persons as the attackers and as regards respondent No.2 is concerned, it is stated that he had assaulted the informant's brother with scythe, which caused injury to the right hand finger. He further states that when his father intervened, so also his wife Ashabai and sister-in-law Ushabai come, all those 8 persons abused and assaulted with fists and kick blows. In the FIR, he has not assigned specific role to respondent Nos.1 to 3 in respect of assault to

deceased Kisan. FIR is not an encyclopedia and, therefore, when the other evidence was available, especially as a part of police papers, at that time, it was expected that the learned Judge should go through all the statements. No doubt witness Babasaheb Pawar, Ushabai Pawar and Ashabai Pawar have made statements that respondent No.2 had assaulted deceased Kisan by Tommy on his head, still the learned Additional Sessions Judge has not taken note of it. It shows lack of application of mind, that is not sufficient for cancellation of bail.

6. Cancellation of bail is a serious affair. Because, the liberty of the accused is restored of course with conditions. Taking away again that liberty requires minute scrutiny. The first reason to reject the bail is that the applicant has not taken immediate steps for cancellation of bail. The application appears to be kept on lingering. The order granting bail was passed on 31.08.2019 and now, those extreme circumstances have not been shown to cancel it today. As regards the material with the charge-sheet is concerned, except these near relatives of the informant, the other witnesses appear to be not supporting the prosecution in a sense that they admit that some incident had taken place, but specific role is not stated. Witness Prakash Rathod stated that though he witnesses the quarrel, he was unable to notice, who is assaulting whom. Statements of certain witnesses have been taken under Section 164 of the Code of

Criminal Procedure also, but witness Subhash Rathod and Prakash Rathod are not supporting the prosecution. No doubt, an old person of 80 years has expired due to the head injury caused to him, but for cancelling the bail whatever grounds have been stated by the applicant are not sufficient. Therefore, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm