

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1726 OF 2021

MADHAV S/O GANGADHAR GATATE
VERSUS
THE STATE OF MAHARASHTRA

...
Ms. Poonam V. Bodke Patil, Advocate for applicant.
Mr. B. V. Virdhe, APP for the respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 21.03.2022

Pronounced on : 22.04.2022

ORDER :-

. The applicant has been arrested in connection with Crime No.63 of 2020 registered with Wadhwana Police Station, Dist. Latur for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of Indian Penal Code and under Section 135 of the Maharashtra Police Act. It will not be out of place to mention here that initially the applicant had filed Bail Application No.679 of 2020 before this Court for regular bail, however, during the pendency of the said application, charge-sheet was submitted and, therefore, that bail application was withdrawn with liberty to approach Sessions Court for regular bail. Thereafter, the present applicant filed Bail Application No.1485 of 2020 and there was also bail application filed by other co-accused. Both the bail applications were rejected by this Court by giving detailed order on 12.01.2021.

That was after the charge-sheet was filed and all the material collected by way of charge-sheet was considered by this Court. Now, practically there is no change in the circumstance, however, the present application has been filed.

2. Learned Advocate for the applicant after narrating the prosecution case once again submitted that there are cross cases in this case. On the basis of FIR lodged on behalf of present applicant's side, R.C.C. No.250 of 2020 came to be registered before the learned Judicial Magistrate First Class Court and when there are two cross complaints, then it is necessary to decide even in the bail application as to which party was first aggressive and which party has acted in exercise of right of private defence. It was further submitted that as per the informant, there was an issue of excavation of canal between his family and the family of the present applicant. When the informant's family wanted to excavate the canal with the help of JCB, at that time, the accused persons were not allowing him to excavate and thereafter the quarrel started. When his father Balaji convinced both the parties and the informant and his family members started proceeding towards their animal shed, at that time, the present applicant and co-accused came there with sticks and axe and attacked them. In the cross complaint, accused – Pratap, in his FIR, has stated that informant, his father and brothers came to him where he was watering the groundnut crop in his land Survey No.205 and they started damaging his crop. When he questioned, he was assaulted. So also, the other persons were assaulted by the informant and

his family members with sticks and axe. The spot panchanama in Crime No.63 of 2020 shows the place of incident with blood stains and chilly powder. The learned Advocate submits that there is no mention in the said spot panchanama that there was any kind of marks on the land which were noted by the Investigating Officer, however, in the spot panchanama in Crime No.64 of 2020 apart from noting the articles lying on the spot, it was found that the groundnut crop was damaged. According to her, damage cannot be so created and shifted from one place to another. As regards right of private defence is concerned, it is stated that when accused - Pratap found that his crop was being damaged i.e. damage to the immovable property, in order to protect the same he might have acted in defence. Learned Advocate for the applicant also pointed out the statement of witness Sudhakar Kolgir, who is stated to be the eye witness and he has stated that Balaji, Sangameshwar, Datta, Rudrappa and Satish were lying in the field of Pratap Gatate after being injured. This is the spot which the eye witness in the case against the present applicant is saying. Therefore, the spot which has been shown to the police appears to be by misguiding. The learned Advocate also argued on the point of unexplained delay of 15 hours, absence of blood marks and the injuries on the applicant, possibility of free and sudden fight, bail is rule and jail is exception, cross complaint etc. Further, it was stated that the change in circumstance is that the applicant was arrested on 06.05.2020 and the case was committed to the Court of Sessions, however, even after lapse of 15 months, the trial has not begun. The charge-sheet in the cross-complaint

is before learned Judicial Magistrate First Class. Learned Advocate for the applicant, therefore, submitted that when there is such change of circumstance and on the basis of all the above points, the applicant deserves to be released on bail.

3. Learned APP strongly opposes the application and submitted that this Court has already observed that there is *prima facie* evidence against the present applicant. Now, because of the cross complaint, the trial is held up. That cannot give right to the applicant to say that he is being languished. Discretion need not be exercised in favour of the applicant.

4. At the outset, it is to be noted that the order passed by this Court on 12.01.2021 is after the charge-sheet and almost all the material that was placed before this Court was considered, including the statement of witness - Sudhakar Kolgir. Merely because one of the witness is stating that he had seen those persons lying in injured condition at one place cannot be taken as a gospel truth. The statements of the injured persons would carry the importance in such situation. Statement of only one person in favour of accused, if it is to be so considered, will not be the only criteria to be considered while releasing an accused on bail.

5. It is also to be noted that the cross complaint has been filed and it is under Sections 143, 147, 148, 149, 324, 427 of Indian Penal Code and Section

135 of Maharashtra Police Act. It was filed by Pratap Sambhaji Gatate on 03.05.2020, whereas the present FIR was filed at 23.58 hours on 02.05.2020. That means, present FIR is earlier in point of time. One of the injured in this case i.e. Rudrappa Balaji Gatate succumbed to the injuries sustained by him and it was noted by this Court even at the time of earlier bail application that he had sustained 13 surface injuries and internal examination showed injuries under scalp. There was depressed wedge shape skull fracture and there were corresponding injuries on the head. The weapons used were axe, sticks etc.

6. Without the evidence, only on the basis of the documents, this Court cannot come to the conclusion that who was the aggressor. The circumstances in which the spot was chosen, its distance from each other, would carry the point as regards who is the aggressor. So also, whether the act that was done by the accused was by way of private defence of either body or property will have to be proved by the accused and unless evidence is led, that point cannot be considered.

7. The change in circumstance that is stated is that even after 15 months, there is no progress. In this connection it will have to be mentioned that due to pandemic situation, the accused persons were not taken from jail to the Court and because of the Standard Operating Procedure, there would not have been progress. This Court by order dated 17.02.2022 had called status report from the concerned Court i.e. Additional Sessions Judge, Udgir, Dist. Latur.

Accordingly, the said status report has been produced. It has been stated that the charge-sheet is filed against 12 accused persons and after the committal of the case, the Court has framed charge against accused persons on 10.01.2022. Thereafter on 24.01.2022, the Advocate for the accused had filed application at Exhibit-32 for issuing directions to learned Judicial Magistrate First Class (Court No.3), Udgir to commit R.C.C. No.250 of 2020, which was the counter case for trying it simultaneously with the Sessions Case No.20 of 2021. It is then stated that it was allowed on the same day. Thereafter, there was also an application of alteration of charge. It was then stated that instead of Section 302 of Indian Penal Code, it should be changed to Section 304-II of Indian Penal Code and the matter was then pending for filing of say by the prosecution for regular bail as well as another application for alteration of charge. It is then stated that the record and proceedings of the counter case has not been received, but in the Sessions Case, the prosecution has cited 31 witnesses. After the committal of the counter case, it will also be tried along with the Sessions Case and it has been opined by the learned Judge that it would take at-least 6 to 8 months to conclude the trial and dispose it of on merits. It is to be noted that the charge-sheet in this case, that means under Section 302 of Indian Penal Code, against the applicant was filed on 27.07.2020 and in respect of counter case it was filed on 22.10.2020. No immediate steps were taken on behalf of the present accused and co-accused to file an application for committal of the counter case. It was ultimately filed on 24.01.2022. Rather, it is also to be

noted that after charge was framed on 10.01.2022, the accused has either changed the Advocate or filed the Vakalatnama for the first time on 24.01.2022. The readiness of the accused to face the trial also counts and it is not only that he should point out certain defects or shortcomings in the procedure unless it is pointed out to the concerned Court that there is counter case. Bringing those cases under one roof before the same Judge will not be possible. The accused and co-accused have almost wasted one year when they had not brought the another case before the same Judge, who is trying the Sessions Case. Now, they cannot take a defence that the applicant is languishing in jail without any trial. When already reasons have been given as to how there is evidence against the present applicant in the earlier order, this Court does not want to repeat the same and now, whatever grounds have been shown are not sufficient to exercise the discretionary power of this Court to release the applicant on bail. The application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm