

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.246 OF 2022

Nagubai Margappa Pawar	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Anand Pande i/b Pawan Singh for the Applicant.

Mr.S.V. Gavand, APP for the State.

PSI Shri Vilas Tameb, Dindoshi Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 18TH AUGUST, 2022.

P.C.

1] The Applicant is charged in CR No. 669/2021 for the offences under Section 302, 307, 326, 397, 143, 145, 147, 148, 149, 504, 506(2) read with 34 of the Indian Penal Code, alongwith 10 accused persons out of whom two are juvenile. The charge-sheet has arraigned the present Applicant as Accused No.3, who is mother of one Akash Pawar-Accused No.5.

2] The case of the prosecution which can be discerned from the charge-sheet is that, there was a long animosity between one Arif Shaikh and Accused Abhi Pawar.

On 11.08.2021, accused Abhi Pawar threatened Arif Shaikh of dire consequences and on 12.08.2021, at around 00.40 hours when

the complainant Arman Khan and his friend Arif were sitting on the road going towards water tank, Abhi Pawar accompanied by his parents, one Hussain and other 4-5 persons arrived alongwith choppers, sickle, bamboo, hockey stick. Abhi Pawar and his parents started abusing Arif and as per the version of Arman Khan, who lodged report in the Police Station and on the basis of which offences have been invoked. When Arif questioned them about cause for abuse, it is alleged that Abhi Pawar assaulted Arif by means of sickle on his head and father of Abhi Pawar started assaulting him with bamboo stick. When the complainant sought to intervene, Abhi Pawar mounted on attack and assaulted on his stomach and hand by means of sickle and other 4-5 unknown persons who were present are attributed role of assaulting Arif by means of bamboo and hockey sticks. Hussain, brother of Ashfaq is also alleged to have assaulted, the complainant by chopper.

3] With the aforesaid accusations being reported, offence was registered when the complainant was under treatment in Kooper Hospital.

His supplementary statement came to be recorded on 25.08.2021 wherein he has stated that since his discharge from the hospital on 19.08.2021 his condition was stable and therefore he was ready for giving supplementary statement.

In the said statement, he state that at around 8.30 to 9.00 p.m., he had exchanged his vehicle with one of his friend and when he arrived near Sudha Hospital, Goregaon (East), he met Arif who informed him that Avinash and his friends are quarreling and he requested him to accompany him. Thereafter, Arif left and after some time the complainant started searching Arif on the road towards water tank, where he saw some boys indulging in quarrel and when he

reached the spot, he noticed that Avinash, his father Margappa, , his mother Nagubai Pawar, his second mother, his brother Ashok, friend Hussain Khan and others whose names are specifically mentioned, were present there.

It is alleged that the Applicant took out keys of his vehicle. He noticed that Avinash and his associates were assaulting Arif by hands. When he sought to intervene, he was threatened and was hit by sickle, and so he felt giddi and sat on the spot.

He state that mother of Avinash was assaulting Arif by pulling him by his hair and when he restrained him, Ashok started assaulting by foot and they took Arif behind vanity van which was parked on the spot. It is also mentioned that second mother of Avinash, was witnessing the incident.

It is alleged that grievous injuries were caused to Arif and even the complainant was stabbed by knife and chopper as well as by sickle. The complainant in an attempt to snatch sickle from Avinash sustained injury on his right hand finger and specific roles are attributed to other associates of Avinash who were present there.

4] The learned counsel for the Applicant has invited my attention to the complaint addressed by the complainant to the Sr. PI on 19.08.2021 where he alleged that 4-5 unknown persons had assaulted him and Arif by means of bamboo and hockey stick. Hussain has been assigned specific role of assaulting the complainant by means of chopper. Request was made to take cognizance of the assault against Abhishek Pawar, his parents, Hussain and 4-5 unknown persons.

The learned counsel for the Applicant would submit that in this complaint, role attributed to the present Applicant is only about her presence.

5] The learned APP has placed reliance upon the statement of one Krishna Mourya recorded on 23.08.2021 wherein, he has stated that he had witnessed the incident at around 12.15 p.m. when one woman, one aged person and 8-10 boys had indulged in to a fight. One woman is alleged to have assaulted one thin boy by pulling his hair and aged person is alleged to have assaulted by kicks and fist blows. He has stated that 8-10 persons who were armed with weapons, also actively participated in the assault.

Another eye witness Mohseen Khan whose statement is recorded on 09.09.2021 also support the version of the complainant as given in supplementary statement.

6] The postmortem report compiled in the charge-sheet refer to 13 injuries in column No.17. In column No.19 it is mentioned as evidence of right fronto-temporo-parietal craniotomy done seen, with duroplasty seen with evacuation of sudural hematoma. Cause of death has been assigned as “shock due to polytrauma due to assault (unnatural)”.

7] The Applicant came to be arrested on the date of incident i.e. 12.08.2021.

Her role in the entire case has surfaced on record through one eye witness and supplementary statement of the complainant , which is recorded six days after his discharge from the hospital and 14 days after the incident. It is noticed that there is improvement in his version, as unknown persons have been specifically named in the supplementary statement and even the Applicant has been attributed role of beating the deceased by pulling his hair. The discrepancy in the said version coupled with the delay in recording supplementary statement, may prove advantageous to the present Applicant, during the trial.

8] Considering the role attributed to the Applicant by the eye witness, she is seen assaulting the deceased by pulling his hair and she faces accusations under Section 143, 147 of the Indian Penal Code, which will have to be established at the time of trial.

Investigation being completed and role of the Applicant having been crystalized in the charge-sheet when no antecedents being attributed to her, being a women, she deserve to be released on bail.

9] It is made clear that the observations made above are restricted for determination of the application and the trial Court in no way shall be influenced by the said observations.

Hence, the following order :

(a) Application is allowed.

(b) Applicant – Nagubai Margappa Pawar shall be released on bail in connection with C.R.No.660 of 2021 registered with Dindoshi Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties of the like amount.

(c) The applicant shall report to the concerned Police Station on first Monday of Trimester during the course of the day.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall regularly attend trial, on every date, unless she is exempted.

[BHARATI DANGRE, J]