

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.473 OF 2022

Santosh Yadav Adagale Applicant
Versus
The State of Maharashtra Respondent

Mr. Satyavrat Joshi i/b. Mr. Nitesh J. Mohite for the Applicant.
Mr. A.A. Palkar, APP for the State.

CORAM : N.J. JAMADAR, J.
DATE : 8th JULY, 2022

P.C. :

1. The applicant, who is arraigned in C.R. No.470 of 2021 registered with Nigadi Police Station, Pune, for the offences punishable u/s.302, 201, 323, 504, 141, 143, 147, 148 of the Indian Penal Code, 1860 ("the Penal Code") and Section 37(1)(3) r/w.135 of the Maharashtra Police Act, 1951, has preferred this application for bail.

2. The gravamen of indictment against the applicant and co-accused runs as under:-

Sandhya Sampat Gaikwad - the first informant, resides at Annabhau Sathe Vasahat, Ota Scheme, Nigadi, Pune, alongwith her husband Sampat Gaikwad (the deceased) and three children. On 19.09.2021, there was a quarrel between Yuvraj Adagale and other boys from the said locality. The deceased had intervened in

the said quarrel with a view to resolve the said quarrel. Co-accused Yuvraj and Vaibhav had an altercation with the deceased over the deceased intervening in the said quarrel. After a while, stones were pelted on the house of the first informant.

3. In the night intervening 19th & 20th September 2021, at about 00.45 am., the deceased went to the house of co-accused Yuvraj, to question him as to why stones were pelted on his house. The first informant, her mother-in-law Sushila Gaikwad and sister-in-law Vaishali Shinde followed the deceased. While the deceased was inquiring with the co-accused as to why stones were pelted on his house, co-accused Yuvraj Adagale, Vaibhav @ Bichu Adagale, Santosh Adagale – the applicant, and his cousins Omkar Balu Adagale and Chetan Balu Adagale came thereat and started to abuse the deceased for intervening in the said quarrel. Co-accused, Vaibhav picked up a concrete block lying thereat and gave a blow on the head of the deceased. The deceased sustained a bleeding injury and fell down. Rest of the accused including the applicant assaulted the deceased by kick and fist blows. The applicant tried to wash out the blood of the deceased, which had spilled on the ground. The deceased was shifted to YCM Hospital. However, he was declared dead before admission.

4. The applicant and co-accused were arrested. Post completion of investigation, charge-sheet has been lodged against the applicant and the co-accused.

5. Heard the learned counsel for the applicant and the learned

APP for the State.

6. The learned counsel for the applicant submitted that the incident had occurred at the spur of moment. The role attributed to the applicant is that of assault to the deceased by means of fist and kick blows. Co-accused Vaibhav gave a blow by means of a concrete block on the head of the deceased. In the circumstances, having regard to the fact that the investigation is complete, further detention of the applicant is not warranted.

7. Mr. Palkar, the learned APP, countered the submissions on behalf of the applicant. It was urged that the deceased was done to death in prosecution of the common object of unlawful assembly. The fact that the applicant had not assaulted the deceased by means of a deadly weapon is, therefore, immaterial. The first informant and her mother-in-law and sister-in-law are the eye-witnesses. Therefore, there is a strong possibility of tampering with evidence and threatening the witnesses.

8. Evidently on the night intervening 19th & 20th September 2021, after initial occurrence, the deceased had gone to the house of co-accused Yuvraj to question him as to why stones were pelted on his house. An altercation ensued. The co-accused Vaibhav picked up a concrete block and gave a blow on the head of the deceased. It is pertinent to note that the cause of death certificate indicates that the deceased died on account of head injury. It is true that the prosecution has alleged that the murder of the deceased was committed in prosecution of the common object of

the unlawful assembly.

9. At this stage, there is *prima facie* material to indicate that the presence of the applicant at the scene of occurrence. However, the fact remains that the gravamen of indictment is that co-accused Vaibhav picked up a concrete block lying thereat and gave a blow on the head of the deceased. There is a general allegation that the rest of accused, including the applicant, assaulted the deceased by fist and kick blows.

10. It is also pertinent to note that after the initial quarrel, the deceased had gone in front of the house of co-accused Yuvraj. It is trite a lawful assembly may turn unlawful subsequently. However, in the circumstances of the case, the question as to whether the applicant was also animated by the same object of committing the murder of the deceased warrants consideration.

11. In the aforesaid view of the matter, I am persuaded to hold that a *prima facie* case for exercise of discretion in favour of the applicant is made out, especially in the backdrop of the role attributed to the applicant.

12. The applicant appears to have roots in society to tie him down to his place of abode and avocation. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.

13. Thus, the following order:

ORDER

- (i) The application stand allowed.
- (ii) The applicant – Santosh Yadav Adagale be released on bail in CR No.470 of 2021, registered with Nigadi Police Station, Pune, on executing a PR Bond in the sum of Rs.25,000/- and one or two sureties in the like amount, to the satisfaction of learned Sessions Judge.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall attend Nigadi Police Station, Pune on every alternate Saturday in between 10.00 am. to 1.00 pm. till filing of the charge-sheet.
- (v) The applicant shall not enter into the area falling within the jurisdiction of Nigadi Police Station, Pune, for the period of one year, except for attending the Police Station as directed.

(N.J. JAMADAR, J.)