

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.687 OF 2021

Mohan Davlya Gavit,]
residing at : Gadchinchale, Taluka]
Dahanu, District Palghar.]
(Presently detained in Thane Central Jail)] ... Applicant

Versus

The State of Maharashtra,]
(At the instance of Kasa Police Station.)] ... Respondent

...

Mr. Wesley Menezes with Mr. Anthony Steven, Mr. Waqaar Pathan and Mr. Noshir Vanila i/b Ashley Cusher for the applicant.

Mr. Satish Maneshinde, Special Public Prosecutor with Ms. S.S. Kaushik, A.P.P. for the State.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 11TH MARCH, 2022.

PRONOUNCED ON : 01ST APRIL, 2022.

ORDER.:-

1. The applicant before me came to be arraigned as accused in

AJN

C.R. Nos.76 of 2020 and 77 of 2020 registered with Kasa Police Station under Sections 302, 307, 120(B), 353, 332, 341, 342, 427, 109, 117, 143, 144, 145, 147, 148, 149, 152, 153, 188, 269, 270 and 290 read with Section 34 of the Indian Penal Code read with Sections 51(b), 52, 54 of the Disaster Management Act, 2005 and Sections 2, 3, 4, 5 of the Epidemic Act, 1897 and Sections 135, 37(1)(3) of the Destruction of Public Property Act, 1984 and relevant provision of the Maharashtra Police Act and came to be arrested on 26/06/2020 and, since then, he is incarcerated.

On completion of investigation, charge-sheet is filed and he is charge-sheeted.

2. The applicant seeks his release on bail on the ground that the prosecution has not been able to compile cogent and reliable evidence against them in the charge-sheet and as the case of the prosecution is to the effect that a mob of 400 to 500 villagers was present at the spot, on the date of the incident and the gathering violated the norms of lockdown and curfew hours and the mob lynched three persons and even attacked the police. It is submitted that the identification of the present applicant in the episode is doubtful.

The learned counsel Mr. Wesley Menezes submits that the charge-sheet is voluminous, running into 12000 pages and the investigation into the offence conducted by the local CID, is in no way, sufficient to implicate the applicant for the offences with which he is charged. It is argued that without any sufficient

evidence, about his active participation in the assault, which led to the death of the three persons, the applicant cannot be held guilty of any conspiracy. The foremost submission of Mr. Menezes is to the effect that the prosecution has collected evidence in the form of CDR of all the arrested persons and shown the presence of the applicant at the place of incident. She states that in the vicinity of Gadchinche and other adjoining area, there is only one mobile tower and, therefore, it is natural to get the same location of any person within the range of 40 kms. Further, the panchanama and the statements of witnesses, who have seen the CCTV footages and identified several persons, who had gathered on the spot on the fateful day also is not sufficient evidence of their participation in the assault since only their presence has been mentioned. The statements of the eye-witnesses, which are compiled in the charge-sheet, also do not clearly indicate the applicant, is the submission.

3. As against the arguments advanced for the applicant, the learned Special Public Prosecutor, Mr. Satish Maneshinde would submit that the incident is a serious one when on 14/04/2020, while the lockdown was enforced in Palghar District, at around 10.00 p.m. – 10.30 p.m., a group of villagers has attacked a private vehicle. The FIR lodged at the instance of the Sub Inspector attached to Kasa Police Station has reported that a mob of around 400 to 500 villagers had assembled in Gadchinche, which included large number of youngsters and the mob had overturned one white Eco vehicle and, three passengers were trapped inside.

These three persons revealed their identity and informed that they were residents of Nashik and were proceeding for funeral of their Guru. However, they were intercepted by the villagers at Gadchinche, who had mistaken them as thieves. The mob had assaulted the occupants of the vehicle by use of wooden sticks, rods and stones and Mr. Maneshinde would submit that the mob turned violent and even started hurling stones at the police van and the incident took a serious turn and the police had to resort to fire in air to disperse the unruly crowd that had been trying to restrain cops from arresting and even attacked them. Mr. Maneshinde would submit that the investigation was initially conducted by Kasa Police Station, but later on, handed over to the State Crime Branch. With the assistance of several villagers, the persons were identified and arrested and, on completion of investigation, the charge-sheet has been filed against 126 arrested accused.

4. The learned Special Public Prosecutor would submit that considering the gravity of the offence, where three persons were done to death and this amounted to lynching by a mob, the prosecution has compiled the evidence in the charge-sheet in the form of CDRs as well as their identification of the accused in the CCTV footages and, accordingly, an affidavit is filed giving a tabular presentation of the prosecution evidence.

5. He would submit that the evidence against the present

applicant is his identification by the witnesses in the CCTV footages and also the CCTV evidence, where the accused has identified himself and a static photo taken out of the video clip, was forwarded to the Forensic Science Laboratory (FSL), which submitted its report, establishing the identity of the accused persons.

6. Based on the affidavit in reply, the role, which has been attributed to the applicant, can be discerned in the following manner :

<u>Applicant</u>	<u>Role attributed.</u>
Mohan Davlya Gavit	• Instigated the accused to harm the deceased who was sitting in the car. • Hindered the police from conducting their duty. • Seen with an axe in the CCTV footage.

7. Considering the role attributed to the present applicant, who is alleged to have instigated the other accused persons, he is not attributed any overt act. He is identified in the CCTV footage and the evidence compiled in the charge-sheet is to the effect that he is a member of the unlawful assembly, gathered on the spot, despite the prohibitory orders issued by the Collector on account of the pandemic situation. He is alleged to have instigated the other accused and hindered the police from the performing their duty. Further, he is also seen going towards the Forest Chowki with an axe and was identified by the witnesses in the CCTV footage,

which is corroborated by the FSL report.

8. Considering the role attributed to the present applicant, which is of his presence and being armed with a weapon, but since no overt act is attributed to him, nor there is any recovery from him, he deserves to be released on bail. It is noted that the investigation is over and the charge-sheet is filed. There is no criminal antecedents against the applicant. This deserves his release on bail. Hence, the following order:

: ORDER :

- (a) The applicant – **Mohan Davlya Gavit** shall be released on bail in C.R. Nos.76 of 2020 and 77 of 2020 registered with Kasa Police Station, District Palghar, on executing P.R. bond in the sum of Rs.25,000/- and furnishing one or two surety in the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The applicants shall attend the trial regularly. Two consecutive absence of the applicants in the sessions trial would lead the prosecution or the Special Court to take out proceedings for cancellation of the bail.

9. The application is allowed in the aforestated terms.
10. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]