

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.954 OF 2021

1. Rajal Mahadu Gurud,]
residing at : Taluka Dahanu, District]
Palghar.]
2. Raju Gopaji Gurud]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
3. Mahesh Janu Gurud]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
4. Vijay Savji Pilena]
residing at : Dhulsetpada, Dabhadi,]
Taluka Dahanu, District Palghar.]
5. Risha Savaji Pilena]
residing at : Dhulsetpada, Dabhadi,]
Taluka Dahanu, District Palghar.]
6. Lahanya Kakad Valakar]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
7. Deepak Rupji Gurud,]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]

8. Sitaram Bhikhlya-Rathad,]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
9. Vijay Raghu Gurud,]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
10. Ratna Kalu Bhaway,]
residing at Divashi, Gadadpada,]
Taluka Dahanu, District Palghar.]
11. Sandesh Janu Gurud]
residing at : Divashi, Chinchpada,]
Taluka Dahanu, District Palghar.]
(Presently detained in Central]
Prison, Taloja, Navi Mumbai.)] ... Applicants

Versus

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

...

Ms. Vrishali R. Raje for the applicants.

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

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 09TH MARCH, 2022.

PRONOUNCED ON : 01ST APRIL, 2022.

ORDER.:-

1. The applicants before me came to be arraigned as accused in C.R. No.I-76 of 2020 and C.R. No.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, 188, 201, 269, 270, 290, 505 (2) 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 came to be arrested on 30/04/2020 and, since then, they are incarcerated.

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

2. The applicants seek their 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 applicants in the episode is doubtful.

The learned counsel Ms. Vrishali Rajee 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 applicants for the offences with which they are charged. It is argued that without any sufficient evidence, about their active participation in the assault, which led to the death of the three persons, the applicants cannot be held guilty of any conspiracy. The foremost submission of Ms. Raje 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 applicants 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 applicants, is the submission.

3. As against the arguments advanced for the applicants, 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 applicants is their identification by the witnesses in the CCTV footages and also the CCTV evidence, where the accused have identified themselves 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 each of the applicant, can be discerned in the following manner :

<u>Applicant</u>	<u>Role attributed.</u>
Rajal Mahadu Gurud (A-1)	• Looking at the car with stick/wooden log in hand. • Standing with stick in hand and was part of mob gathered that hit the deceased. • Proceeded to hit the deceased while they were seated in police van. • Hit Sadhu (Deceased) while in police van. • Throwing stones at deceased.
Raju Gopji Gurud (A-2)	• Running to the spot of incident.
Mahesh Janu Gurud (A-3)	• Had a weapon and/or participated in the assault. • Hitting Sadhu with stick/log and standing next to car. • Throwing stones at deceased and with stick in hand.

	• Seen with stick.
Vijay Savji Pilena (A-4)	• Had a weapon and/or participated in the assault. • Seen with torch and axe in hand, hitting Sadhu with stone in car through broken glass, then throws 2 more stones at deceased.
Risha Savji Pilena (A-5)	• Had a weapon and/or participated in the assault. • Had stones in both hands.
Lahanya Kakad Valakar(A-6)	• Had a weapon and/or participated in the assault. • Throwing stones at car and hitting the car with stick/log. • Had a stick in hand and throwing 4 stones at car.
Deepak Rupji Gurud (A-7)	• Had a weapon and/or participated in the assault. • Had a stick in hand.
Sitaram Bhikha Rathad (A-8)	• Had a weapon and/or participated in the assault. • Running to the spot.
Vijay Raghu Gurud (A-9)	• Had a torch in hand and gesturing.
Ratna Kalu Bhavar (A-10)	• Had a weapon and/or participated in the assault. • Standing next to forest chowki.
Sandesh Janu Gurud (A-11)	• Had a weapon and/or participated in the assault. • Had a stick in hand. • Hit deceased with stick while they were seated in police van. • Standing next to car and talking.

7. On analyzing the role attributed to the applicants from the

charge-sheet, as far as applicant Nos.2, 4, 7, 8, 9 and 10 are concerned, the evidence against them establish their presence on the spot, as they are identified by the witnesses. But, they are not attributed any overt act of assault, though each one of them was carrying some weapon. The witnesses have only spoken about the presence of the said accused persons. The learned counsel for the applicants had submitted that the applicants are the tribals/aadivasis and it is not uncommon for them to carry a stick/bamboo in their hands and particularly in late night hours, if they are required to move in the village/their hamlet.

8. As far as the other applicants i.e. applicant Nos.1, 3, 5, 6 and 11 are concerned, the evidence collated in the charge-sheet specified the overt act by each of them and their actual participation.

Applicant No.1 Rajal Gurud is charged of hitting the deceased Sadhu, while in police van and he is also seen throwing stones at the deceased. Applicant No.3 Mahesh Gurud is identified to be a part of the mob and had a weapon with him and he has actually participated in the crime as per the statement of one Vishnu Bhavar, resident of Gadchinche. Further, as far as Mahesh Gurud is concerned, he has identified himself in the CCTV footage when a person with a parrot coloured T-shirt is seen assaulting deceased Sadhu, by means of stick. He is also identified/spotted in the CCTV footage and seen throwing stones at the deceased and is seen holding a stick in his hand.

In case of applicant No.5 Risha Pilela, he is identified in the CCTV footage with stones in both hands and witness Vikas Kanoja has identified him as an actual participant in the incident being armed with weapon.

Applicant No.6 Lahanya Valakar is identified on the mobile clip and also seen throwing stones at the car and hitting the car by means of a log. In the CCTV footage, he is seen with a stick in his hand and throwing stones at the car. Applicant No.11 Sandesh Garud is identified on the mobile clip and seen hitting the deceased with stick, while seated in the police van.

9. The evidence compiled against the aforesaid applicants is in form of panchanama drawn on 21/05/2020 and several residents of adjoining villages were summoned in the guest house of the Forest Department at Kasa. The recording of the CCTV camera, NVR installed in the Forest Checknaka, Gadchinche, Taluka Dahanu, District Palghar was seized and was forwarded in a pen-drive to the FSL, Kalina, Mumbai. On the CCTV footage being run, the witnesses were asked to identify the persons in the footage and 26 persons acted as witnesses in the whole exercise and these witnesses recognized the persons in the footage and in the statements of the witnesses, they specifically make mention of the presence of the applicants on the spot and their participation in the incident. Each witness has identified distinct accused.

On the basis of the CCTV footage, the image of the person who was identified by the witnesses was reduced to a screenshot

and his name was scribed below the said photograph, which was signed by the panch, the investigating officer and the panchanama was signed by all the 26 witnesses present for identification of the accused.

10. Distinct witnesses have identified distinct accused and their statements came to be recorded on 21/05/2020, which are compiled in the charge-sheet.

Apart from this, another method used for establishing the identity of the persons present in the CCTV footage was on panchanama drawn on 18/05/2020, where the CCTV footage was played on a laptop and the accused person himself had identified his presence in the footage and he described his participation in the incident. A screenshot of the accused was obtained and printed, which was signed by the panchas, accused and the investigating officer.

The still photographs/screen shots were forwarded for analysis along with the actual photos of the accused taken from different angles and the report from the FSL has confirmed that the actual photos of the accused match with the screenshots collected from the CCTV footage under panchanama. This is how the identification of the accused/applicants is established and their distinct roles set out in the charge-sheet.

11. The efficacy and admissibility of this evidence, particularly the identification of the accused persons by themselves in the

video clip and whether it would be hit by Article 20(2) of the Constitution is a matter of trial. However, at present, suffice it to note that the Directorate of FSL, Kalina, Mumbai, has submitted its report and compared the two images and an analysis by them, by frame by frame, found it to be matching with the image of particular accused. The said report is issued under Section 65 of the Evidence Act and clarified that the results related only to the exhibits tested.

12. In short, the material compiled against the applicants is based on the report of the FSL, where the reference photograph matched with the image of the accused in the CCTV footage and the video and, at this stage, it can be said to be sufficient material to implicate the accused.

13. Considering the aforesaid, as far as applicant Nos.2, 4, 5, 7, 8, 9 and 10 are concerned, the evidence against them in the charge-sheet is to the effect that they have been identified / spotted on the CCTV footage and are accused of being a part of the mob with some weapons, but since no overt act is attributed to them and particularly, now when the investigation is complete, their custody is not warranted and they are entitled to be released on bail.

14. As far as applicant Nos.1, 3, 6 and 11 are concerned, they have been identified in the CCTV footages and the mobile clips

and the overt acts like applicant No.1 hitting deceased and throwing stones, applicant No.3 hitting the deceased Sadhu with stick/log, applicant No.6 throwing stones at the car and hitting the car and applicant No.11 seen hitting the deceased with stick while in police van, clearly point out to their active participation in hitting the deceased, who succumbed to the injuries. These applicants, in the wake of the evidence compiled against them, do not deserve any relief and their application is rejected. Hence, the following order:

: O R D E R :

- (a) Applicant No.2 – **Raju Gopaji Gurud**, applicant No.4 - **Vijay Savji Pilena**, applicant No.5 – **Risha Savaji Pilena**, applicant No.7 – **Deepak Rupji Gurud**, applicant No.8 – **Sitaram Bhikhlya Rathoad**, applicant No.9 – **Vijay Raghu Gurud** and applicant No.10 – **Ratna Kalu Bhawar** shall be released on bail in C.R. No.I-76 of 2020 and C.R. No.77 of 2020 registered with Kasa Police Station, District Palghar, on executing P.R. bond in the sum of Rs.25,000/- each and furnishing one or two surety in the like amount.
- (b) The applicants 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.

15. The application is partly allowed in the aforestated terms.

16. 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.]