

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1292 OF 2021

Sadashiv Sampat Pawar .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Satyavrat Joshi with Mr.Nilesh Mohite i/b Mr.Sunil S. Kamble for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 03rd AUGUST, 2022

P.C:-

1. The applicant is charge-sheeted for the offences punishable under Sections 302, 307, 326, 324. 323. 504, 506, 143, 147, 148 and 149 of I.P.C. and came to be arrested on 22/05/2019.

2. The complaint, which resulted in registration of C.R.No.197 of 2019, is filed by one Mahadev Sampat Pawar, who has reported to the police station that the applicant is his brother and there used to be a quibble between them, on

account of some right of passage, through the adjoining field, which was purchased by the father-in-law of the applicant. He stated that at times, their discord was settled, but still it was not put to rest completely.

3. He refers to an incident dated 05/05/2019, at around 6.00 p.m., when the complainant was filling water, his brother Sadashiv (present applicant) abused him and assaulted him by hands and stone. His family intervened, and the complainant was taken inside the house. Since, he sustained injury, his son-in-law Abhinandan was also called. While they were about to proceed to the hospital, it is alleged that the applicant armed with an axe came in front of their house, accompanied with five accused persons. When Abhinandan questioned the applicant about the reason for assaulting his father-in-law, applicant is alleged to have assaulted him by means of an axe in his head. He collapsed and when his wife and other persons intervened, the applicant is alleged to have assaulted the complainant on his left leg and assaulted Ashish by means of the axe near his eye and right hand. His wife and son also sustained injuries as the applicant continued his feat of assault. The injured, Abhinandan succumbed to the injuries on 22/05/2019 and the postmortem report, ascertain the

cause of his death as, "Neurogenic shock due to assault, head injury by hard object". Column No.17 refers to the four sutured wounds and Column No.19 refers to craniotomy dem at right tempo-parietal vault.

4. The same incident is reported by the applicant, which resulted in registration of C.R.No.198 of 2019 invoking Sections 323, 324, 326, 504, 506, 143, 147, 148 and 149 of I.P.C. and the offence is registered against the five named persons and one unknown person. In the complaint, the applicant has alleged that Abhinandan assaulted Yuvraj Mohite by means of an axe in his hand and caused bleeding injury to him. He further alleged that his brother Mahadev, his son Ashish and wife Anita assaulted Yuvraj by wooden stick, as a result, he picked up an axe from the cow shed and in defence raised it, to protect himself, being unaware who was hit by it.

The injury certificate of Yuvraj is placed on record, which refer to CLW over left parietal region and is described as a grievous injury. The applicant is also reported to have sustained injury and the injury is described in the certificate as abrasion and blunt trauma.

5. Mr.Joshi, learned counsel for the applicant, would submit that the act of the applicant should be looked at, from the view of he responding to the assault mounted by Yuvraj on his family members and he raises a plea of private defence. The success of the plea of private defence will depend upon the evidence led before the trial Court and, particularly, looking to the injuries sustained by Yuvraj and the question will be, whether the plea is permissible in the wake of the injuries sustained by Abhinandan, who succumbed to the injuries.

6. The material compiled in the charge-sheet is in form of statements of the eye witnesses, who have witnessed the incident, including the complainant himself, corresponding with injuries and the postmortem report. A clear role is attributed to the applicant and the death of Abhinandan is on account of the injuries, which are authored by the present applicant. Considering the gravity of offence and the role of the applicant, being crystallized in the charge-sheet, the application deserves to be rejected and, is, accordingly rejected.

Needless to state that the observations made above are, *prima faice*, in nature and are limited for the purpose of

adjudication of the present application and shall not influence the learned Judge, when he proceeds with the trial.

7. It is informed that charge has not been framed till date. The learned Judge is requested to frame a charge within a period of six months and proceed with the trial expeditiously.

(SMT. BHARATI DANGRE, J.)