

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3928 OF 2021

Nazim Nazakat Ansari	...	Applicant
<i>Versus</i>		
The State of Maharashtra	...	Respondent

BAIL APPLICATION NO. 4334 OF 2021

Sasa @ Sagar Dashrath Waghmode	...	Applicant
<i>Versus</i>		
The State of Maharashtra	...	Respondent

Ms. Ankita Bamboli i/by Mr. Subhash Hulyalkar for the Applicant in BA/3928/2021.

Mr. Rahul Dhaigude for the Applicant in BA/4334/2021.

Mr. A. A. Palkar, APP for the State.

CORAM : VINAY JOSHI, J.

DATE : 19th APRIL, 2022

P.C. :-

. Both application arises out of Crime No. 354 of 2019 registered with Chinchwad Police Station, District Pune for the offences punishable under Section 307, 323, 506 read with 34 of Indian Penal Code. Later on the Police invoked Section 302 of the Indian Penal Code as the injured Amit Pote died under treatment.

2. The bail is claimed on the ground of innocence, false implication and ready to abide conditions, etc. Besides that, it is argued that presence of both applicants namely Nazim Ansari and Sasa @ Sagar Waghmode is not evident from the material placed on record. It is pointed out that neither there is recovery nor any motive for both

applicants. Moreover, the bail is claimed on the ground of parity by contending that one of the co-accused namely Jaid Mujawar has been released on bail.

3. The State resisted the bail by contending that the informant on the date of occurrence itself has stated about the presence of both applicants. There are allegations that applicants and co-accused have assaulted deceased by means of dangerous weapons. There are other eye-witnesses to the occurrence. Having regard to the seriousness of crime resistance is put-forth.

4. At the instance of report lodged by brother of deceased namely Suraj Jagtap, crime was registered. It is the informant's case that, four persons namely Mayur Lokhande, Pankaj Jagtap, Kishor Ingde and Jaid Mujawar used to threaten him at the instance running mobile shop. The deceased Amit Pote was informant's friend. On 5th October, 2019, above named four assailants came near temple and there was scuffle in between them. After short time, all four persons have assaulted deceased Amit Pote by means of sickle to which he succumbed later on.

5. It reveals from Police papers that on the very day the Police have recorded supplementary statement of the informant, in which he has added 7 to 8 more persons naming them to be assailants, ascribing role of equally assaulting deceased by means of dangerous weapons. True, on the very day, informant has disclosed some more names, however, it appears that in initial report, there is no reference about presence of any other persons. With the assistance of both sides, I have gone through the statements of three eye-witnesses. Though, eye-witnesses have

named assailants, however, they have not stated specific role of existing applicants. True, there are cojoint statement that 8 to 9 unknown persons were there but the statement does not travel beyond that with specification. There is no disclose statement nor consequential recovery at the instance of both applicants. The prosecution is not in a position to point out any other material which could evolve the complicity of applicants in connection with crime.

6. It is apparent that co-accused Jaid Mujawar was named in the FIR as an assailant. He is released on bail on 28th April, 2020 on account of failure to file charge-sheet within stipulated period. The applicants' learned counsel would submit that though it was a default bail, despite he being main accused was released on bail. Both applicants are entitled for the same treatment. Reliance is placed on the decision of this Court in case of ***Sajid Basir Shaikh v/s. The State of Maharashtra*** in Criminal Application No. 3157 of 2005 decided on 6th July, 2005 to contend that even if bail was granted in terms of Section 167(2) of the Code, still there is no difficulty in invoking rule of parity. In order to invoke the rule of parity, it is necessary to see the role played by co-accused who was already released. There is no quarrel on the point that Jaid Mujawar who was released on bail was named in FIR itself with specific role. The present applicants are not named in FIR, therefore, their case cannot stand on higher pedestal nor on equal to the Jaid Mujawar.

8. The investigation is completed long back and charge-sheet has been filed. There appears to be rival terms in between informant and named four assailants. Though, it is hard to prove the motive,

however, *prima-facie* there is no material to indicate any motive or enmity in between deceased and both the applicants. Certainly, trial will take its own time for disposal according to law. Having regard to these facts, the applicants can be enlarged on bail by imposing certain conditions. Hence, the following order :-

ORDER

- (a) Both Bail Applications stand allowed.
- (b) Applicants namely Nazim Ansari and Sasa @ Sagar Dashrath Waghmode are released on bail in connection with the Crime No. 354 of 2019 registered with Chinchwad Police Station, Pune for the offences punishable under Sections 302, 307, 323, 506 read with 34 of Indian Penal Code, on their furnishing P. R. Bond of Rs.50,000/- with one or two sureties in the like amount each.
- (c) The applicants shall not enter within the territorial jurisdiction of Municipal limits of Pimpri Chinchwad Municipal Corporation till recording of evidence of all material witness i.e. evidence of informant and all eye-witnesses.
- (d) Both applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (e) Both applicants shall provide their cell number and residential address to the concerned Investigating Officer where they intend to reside, within one week from their release.
- (f) Both Applications are disposed in above terms.

BIPIN
DHARMENDER
PRITHIANI

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[VINAY JOSHI, J.]