

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1987 OF 2021

- | | | |
|----|--------------------------------------|----------------|
| 1. | Ishwar Bandhu Nikole, |] |
| | residing at Sathepada, |] |
| | Gadchinchale, Taluka Dahanu, |] |
| | District Palghar. | |
| 2. | Bhau Dhakal Sathe |] |
| | residing at : Hedpada, |] |
| | Gadchinchale, Taluka Dahanu, |] |
| | District Palghar. |] |
| 3. | Firoj Bhau Sathe, |] |
| | residing at : Hedpada, |] |
| | Gadchinchale, Taluka Dahanu, |] |
| | District Palghar. |] |
| 4. | Havasa Tulji Sathe |] |
| | residing at : Hedpada, |] |
| | Gadchinchale, Taluka Dahanu, |] |
| | District Palghar. |] |
| | (Presently detained in Taloja Centra |] |
| | Prison, Taloja, Navi Mumbai.) |] |
| | | ... Applicants |

Versus

The State of Maharashtra,	]
(Through Criminal Investigation	]
Department, Maharashtra Police, Konkan	]
Bhawan, Navi Mumbai.)	]
	... Respondent

...

Mr. Ashish Chavan with Mr. Jayesh Bhosle, Mr. Advait Helekar
and Ms. Neena George i/b Mr. Aditya Iyer 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 : 11TH MARCH, 2022.

PRONOUNCED ON : 01ST APRIL, 2022.

ORDER:-

1. The applicants before me came to be arraigned as accused in C.R. No.77 of 2020 registered with Kasa Police Station under Sections 307, 332, 333, 341, 427, 147, 148 and 149 of the Indian Penal Code read with Sections 3 and 5 of the Prevention of Damages to Public Property Act, 1984 and came to be arrested on 16/04/2020 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 Raje 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>
Ishwar Bandhu Nikole (A-1)	• Instigated the other accused to attack and kill the deceased. • Hindered the police from conducting their duty.
Bhau Dhakal Sathe (A-2)	• Brutally beating the deceased persons with a stick. • Blood stains found on the stick seized from him, which blood group was matched with the blood group of the deceased. • Hindered the police from conducting their

	duty.
Firoj Bhau Sathe (A-3)	• Assisted the other accused to brutally beat the deceased. • Hindered the police from conducting their duty.
Havasa Tulji Sathe (A-4)	• Blocked the way of the deceased persons by bringing down the wooden barricade at the check post and threatened to kill the deceased. • Brutally beating the deceased with a stick. • Blood stains found on the stick seized from him, which blood group was matched with the blood group of the deceased.

7. The charge-sheet reflects distinct roles to the four applicants and as far as applicant Nos.1 and 3 are concerned, they are accused of instigating the other accused persons when they were attacking the deceased persons. They are also charged for hindering the police from performing their duty and this reflects that they have not actively participated in the incident. The roles attributed upon them with the aid of Section 120-B is a matter of trial and they may take the consequences for the serious offences of murdering the three persons at the conclusion of trial. However, at this stage, since the investigation is complete, their further custody is not essential.

8. As far as applicant No.2 is concerned, he has played an active role in the assault and he is found to be beating the deceased with a stick in the CCTV footage. Apart from this, the blood stains found on the stick seized from him, match with the blood group of the deceased and this material points out towards his

implication in the offence. As far as applicant No.4 is concerned, he is also seen assaulting the deceased with a stick and even there is a recovery of stick from him with the blood stains, which match with the blood group of the deceased. The report of the FSL to the said effect is compiled in the charge-sheet. This does not warrant the release of applicant Nos.2 and 4 on bail. Since the gravity and seriousness of the offence is also an important factor, it deserves to be taken into consideration, while dealing with an application for bail and, therefore, their bail application is rejected. Hence, the following order:

: O R D E R :

- (a) Applicant No.1 – **Ishwar Bandhu Nikole** and applicant No.3 - **Firoj Bhau Sathe** shall be released on bail in 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.

9. The application is partly 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.]