

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3079 OF 2021

Ramesh @ Raju Kakasaheb Gaikwad .. Applicant

Versus

The State of Maharashtra .. Respondent

ALONGWITH
INTERIM APPLICATION NO.2195 OF 2022

Kamal Ambadas SalveApplicant/Intervener

In the matter between

Ramesh @ Raju Kakasaheb GaikwadApplicant

Versus

The State of MaharashtraRespondent

Mr. Dilip B. Shinde a/w. Mr. Sachin M. B. for the Applicant in BA/1327/2022.

Mrs. Anamika Malhotra, APP for the State.

Mr. V.S. Lakshmanan i/b. Sanjkar Law Associates for the Applicant in IA/2195/2022.

CORAM: BHARATI DANGRE, J.

DATED : 22nd JULY, 2022

P.C:-

1. The applicant is charge-sheeted for the offence punishable under Section 302, 120(B), 324, 323, 143, 146, 147, 148, 149, 504 and 506 of the Indian Penal Code read with 37(1)(4) of the Maharashtra Police Act, 1951 in CR No.470 of 2021 registered with Vikhroli Police Station. The applicant came to be arrested on 13.10.2020 and since then he is incarcerated.

On competition of investigation, charge-sheet is filed and it is informed that the charge is not yet framed.

2. The applicant is arraigned as Accused No.1 in the CR which is registered, on the complaint lodged by the wife of the deceased, one Ambadas Salve.

3. On 29.10.2020, she reported to the police station informing at around 3.00 p.m. while her husband was returning home, after completing his duty as a Watchman, he was assaulted by a person named as Ramesh @ Raju Kakasaheb Gaikwad (the applicant) on the pretext that the complainant was collecting signatures and making a representation to the Collector. Her husband informed her on telephone that Raju Gaikwad alongwith six other persons had beaten him by bamboo and fist and blows. Her version is, he came home and narrated to her that he was assaulted on waist, backside and leg. At that time, she, her son Sachin and one neighbor Aakash took him to the hospital at Vikhroli by Autorickshaw. He was admitted in ICU ward and this resulted in the complaint being filed.

4. Her supplementary statement came to be recorded on the very same day informing that on 29.10.2010 at around 21.30 her husband had succumbed to the injuries. The Inquest Panchanama was conducted and so also the Postmortem Report. The Postmortem Report refer to contusion and abrasions in Column No.17. The final report of postmortem has been received which analyzed the cause of death as "Coronary Artery Disease with multiple contusions".

5. During the course of investigation, the statement of the daughter-in-law of the deceased and his son has been recorded. The daughter-in-law in her statement under Section 161 of the Cr.P.C. informed the police that her father-in-law made a phone call in the afternoon, which was received by her and he narrated to her that he was assaulted by Raju Gaikwad and other persons. The daughter-in-law stated that the huge crowd had gathered and from the woman in the neighborhood she came to know that Raju Gaikwad and his friends had assaulted her father-in-law and he was taken to the hospital and he succumbed to the injuries.

The reason for the assault is narrated by her in her statement, by reporting that on 27.10.2020 her mother-in-law and 14 to 15 residents in Panthor Nagar had approached the Collector claiming regularisation of their shelters/houses and this had irked the present applicant and in order to revenge the action of her mother-in-law, the applicant had assaulted her father-in-law. In her statement, she has specifically stated that at the time when she received a phone call, her mother-in-law was outside the house and her brother-in-law Sachin was sleeping in the house.

6. The statement of Sachin is also recorded and compiled in the charge-sheet where he disclose that on 29.10.2020 at 3.30 p.m. his father called up his sister-in-law and informed about the assault by Raju Gaikwad and 5-6 other assailants and this information was transmitted to him and therefore, he approached AXIS Bank, Kannamwar Nagar, where his father

was found in the injured condition. While approaching the police station to lodge the report, since he was uncomfortable, they took him to the hospital.

7. The aforesaid set of witnesses are the close relations of the deceased.

Statements of some independent witnesses also came to be recorded, who had witnessed the incident and this include the statement of Amit Kaluste and Rohan Gambre. The said two witnesses have stated that on hearing the commotions, when they came out, they saw 6-7 persons assaulting one man with wooden rod and they fled away. Unfortunately, yet there is no test identification parade conducted by the prosecution, so as to establish the identity of the assailants at the instance of these witnesses, who had seen the incident taking place. Statement of one Taramati Patekar is also compiled in the charge-sheet, who state that when she visited the hospital to obtain discharge of her daughter, the deceased was on the stretcher and when she has enquired what has happened, it was disclosed to her that Raju Gaikwad and six other persons had assaulted.

8. The postmortem report refer to multiple injuries in Column No.17. The prosecution rely upon the statement of the near and dear ones and the learned APP would submit that the deceased had specifically taken the name of the applicant. However, none of the eye-witness have named the applicant, even though witnesses have seen the actual incident happening and they know the applicant who is resident of

some locality.

In the background, it can be seen that there was some previous animosity in the two groups of the locality and the learned counsel for the applicant has submitted that on account of this, he has been wrongly implicated.

Learned APP would vehemently submit that the applicant has serious criminal antecedents and she has invited my attention to the series of offences registered against him from 1988 to the year 2014. Perusal of the said list of offences, it is revealed that barring three offences registered in the year 2008, 2011 and 2014, which are shown to be pending for investigation and pending in Court of law, he has been acquitted from all the offences. Some prohibitory actions under the Maharashtra Police Act, 1951 are also initiated against him is the submission.

9. Considering the accusation faced by the applicant and since he is incarceration since last two years, in the wake of the material compiled in the charge-sheet, which material prima facie do not conclusively implicate the applicant since it is only based on the statement of the deceased, which in any case, is in the form of extra judicial confession would warrant a corroboration and ultimately this would all be determined at the stage of trial. However, since the learned counsel for the applicant has vehemently argued that the applicant has created a reign of terror in the locality, the interest of the complainant and his family members can be served, if a stringent condition is imposed on the applicant, as being

ousted from the jurisdiction of Vikhroli. The learned counsel for the applicant, on instructions, submits that the applicant shall continue to reside in Badlapur and after marking his first attendance in Vikroli police station, he shall report to Badlapur police station.

The observations made above are prima facie in nature and are restricted for deciding of the present application.

10. Hence, the following order.

ORDER

- (a) Application is allowed.
- (b) Applicant - Ramesh @ Raju Kakasaheb Gaikwad shall be released on bail in connection with C.R.No.470 of 2020 registered at Vikroli Police Station on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The applicant alongwith his family shall move out of the current residential address and shall not step into the jurisdiction of Vikroli Police Station barring for the limited purpose of giving details of his residence to the Investigating Officer.
- (e) On releasing the bail, the applicant shall report to Vikroli Police Station and inform the Investigating Officer therein about his address where he will continue to reside with his family and thereupon he shall report to the concerned police station within whose jurisdiction the residential premises would fall, on first Monday of every month between 10.00 a.m. to 1.00 p.m.

(f) The Applicant shall regularly attend trial, on every date, unless he is exempted.

(SMT. BHARATI DANGRE, J.)