

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3468 OF 2021**

Bhalchandra Manohar Yadav .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Pravin G. Pillay for the Applicant.

Mr.Ajay Patil, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 01st MARCH, 2022

P.C:-

1. The applicant is charge-sheeted in C.R.No.555 of 2020 registered with Powai Police Station, on 27/01/2020, for the offences punishable under Sections 302, 323, 326, 342, 504, 506 read with 34 of the IPC.

The C.R.came to be registered on a complaint filed by one Tanveer Abdul Nadaf, aged 18 years.

The complainant alleged that he was engaged in a mobile repairing company. Since 3 to 4 days he was at home and, therefore, he proceeded to Powai Lake for fishing at around 4 p.m. on 20/10/2020. It is narrated by him that he dashed against an unknown person on his way, who abused him and indulged him in a quibble. At that time, one another unknown

person arrived at the spot and slapped him, resultantly, he also slapped the said unknown person. This resulted in he being assaulted by fist and blows by him.

At that very moment, three unknown persons arrived at the spot, who were armed with wooden stick, belt and pipe and all the persons present there threatened him and started arguing with him. When he attempted to pacify them, he was assaulted by them on his legs, hand, back, head etc. He narrated that he sustained building injury and, since, he was feeling dizzy, he hide himself behind the tree.

In the altercation, he lost his mobile phone and, was unable to establish any contact. At around 11.00 p.m., his friend Muga took him home and he narrated the incident to his family members.

The complainant stated that he was taken to Mhatma Phule Hospital for treatment and, thereafter, taken to Sion Hospital since he sustained fracture on his right leg and left hand, which had swollen.

2. The complaint was, therefore, lodged against four unknown persons on 21/10/2020 and he gave the description of the said persons by mentioning their complexion, body frame etc. This resulted in registration of an FIR against unknown persons, invoking Sections 323, 326, 504, 506 read with Section 34 of the IPC.

The complainant, who was taking treatment, expired in Sion Hospital on 28/10/2020 and, thereupon, the offence under Section 302 of the IPC came to be added.

On postmortem being carried out, the cause of death was declared as under :-

“Opinion reserved with evidence of fracture ulna and multiple abrasions on the body.”

During the course of investigation, accused Nikesh Jadhav, Shashank Jadhav and Vinod Thakur came to be arrested and on investigation, it was revealed that some other persons are also involved and that is how the name of the applicant-Bhalchandra Yadav alongwith one Arvind Yadav has surfaced on record. The applicant came to be arrested on 03/11/2020 and since then he is incarcerated.

3. When the learned APP is asked to discern the role of the present applicant in the said crime, he referred to two statements compiled in the charge-sheet. The first statement being of the brother of the deceased, Gulam Mustafa Nadaf, recorded on 28/10/2020. He reiterated the version of the complainant and stated that the offence was registered against four unknown persons.

Gulam Mustafa state that while his brother was undergoing treatment in Sion Hospital, he had disclosed to him, that on 20/10/2020 at 16.00 hours, accused-Vicky, Pravin and Bhaiya snatched his mobile and assaulted him. He narrated that when he raised clamored, he was taken in the office of Nisarg Udyan and was assaulted by fist blows and by a spade. He was threatened by brandishing a knife that he shall not disclose the incident to any one. When he attempted an escape, he was assaulted on the back by means of a knife and

when he was desperate in seeking help, he was tied to a chair and assaulted by wooden stick, belt, pipe, spade, fist and blows on various part of his body. When he repeatedly requested for his release, he came to be released, but he was threatened that, he shall not disclose the incident to any one. Since he was petrified, he hide himself in the garden and with the help of his friend Googa, he returned to home.

4. Pertinent to note that the said statement does not name the present applicant.

Another statement on which the learned APP place reliance is of Smt.Bhagabai V. Sutar, who in her statement dated 04/11/2020 report that on 20/10/2020, she alongwith other women workers working in the garden, reached the room to keep their bags. At that time, she could hear shrieks from the room and when she went inside, accused Nikesh and Vinod were present. One boy was tied to the window and Nikesh was assaulting him by a big scissors, when she told him not to assault and came out. She informed her master by name Shri Parulekar that one boy was tied and there appear to be some problem and requested him to come on the spot. While returning from work in the afternoon, she noticed Parulekar Sheth on the gate of the office. On completion of the work, she left the premises at 5.00 p.m.

Even this statement does not implicate the applicant.

5. The learned APP also placed reliance upon the statement of Sachin Ghosalkar dated 04/11/2020, who was entrusted the

electrical work and maintenance of CCTV cameras by way of a contract. He stated that there were no fix working hours, but randomly he visited the site. He deposed that the BMC had allotted the contract of cleaning, plantation and it's supervision to Shri Bhalchandra Yadav i.e. the present applicant, who had engaged 7 to 8 female workers for maintaining the premises alongwith four security guards, gardeners and persons to carry out electrical work. The electric work contract was allotted by Company Manager Shri Udaylal Gujar to Bhalchandra, who was getting the work executed through his employees. It is stated by Sachin Ghosalkar that Shashank Jadhav, Arvind Yadav, Nikesh Yadav and Nitesh Yadav were engaged by the applicant and Nitesh was looking after the electrical work whereas Nikesh, Arvind and Shashank were residing in the room nearby.

It is further stated that alongwith them, for the last 15 to 20 days, one another person was found to be working, but he is not aware about his name.

He further stated that on 20/10/2020, at around 9.30 p.m., when he arrived at the spot of Nisarga Udyan, Powai and proceeded to his room in the office and after carrying out the cleaning work, he came out of the room, he peeped into the labour room and he was informed by Shashank that the person who had stolen the goods has been caught. Inside, he noticed Nikesh standing next to the person who was tied to the grill of the window and on carefully inspecting, he noticed that the said person had suffered injuries on his left hand and legs and he was bleeding from the thumb of his left leg. He asked Shashank Jadhav to report the matter to the police, but he

was asked to leave and the door of the room was shut.

On the similar line, is the statement of one Pankaj More is recorded.

However, none of the statement implicate the present applicant as an assailant and the statements are to the effect that the work of maintaining the garden was allotted to the applicant and he used to get the work done through his employees and the accused persons i.e. Nikesh, Nilesh, Shashank, Vinod and Arvind were engaged by him for executing the work.

6. Perusal of the charge-sheet does not reveal any involvement of the present applicant except that the other accused persons are engaged by him to execute the contract allotted to him by the Municipal Corporation, for maintenance/plantation of the garden. The charge-sheet mentions about the CCTV footage recorded in the CCTV cameras affixed on the main gate, but even the said footage does not refer to the present applicant.

7. In the wake of the material contained in the charge-sheet, the applicant who is arraigned as accused No.4, cannot be kept incarcerated further. It is made clear that the aforesaid observations are *prima facie* in nature and it is open for the prosecution to rely upon the other material contained in the charge-sheet to establish the guilt of the present applicant at the time of the trial. Hence, the following order.

: ORDER :

- (a) The application is allowed.
- (b) Applicant – Bhalchandra Manohar Yadav shall be released on bail in C.R.No.555 of 2020 registered with Powai Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties in 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 and shall not tamper with the prosecution evidence.
- (d) The applicant shall make himself available as and when required by the Investigating Officer.
- (e) The applicant shall attend the trial on regular basis.

(SMT. BHARATI DANGRE, J.)