

Sayali Upasani

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

BAIL APPLICATION NO. 3554 OF 2021

Prasad Abhang Holkar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Nagesh Chavan, for the Applicant.

Ms. P.N. Dabholkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 14th July, 2022

ORDER:-

1. The applicant Prasad Holkar, who is arraigned as accused No. 7, along with the co-accused in C.R. No. 190 of 2020, registered with Kavathemahankal Police Station, Sangali, for the offences punishable under Section 120-B, 302, 307, 354-A, 323, 324, 143, 147, 148, 149 of Indian Penal Code, 1860 ("the Penal Code") and Section 4 read with Section 25 of Arms Act and Section 135 of Maharashtra Police Act, 1951 has preferred this application to enlarge him on bail.

2. Rutuja Gore (the first informant), is the daughter of Netaji Gore (the deceased). Nitin Holkar, the accused No. 1 and his family are the neighbours of the deceased. Since a

couple of years, disputes were festering between the deceased and Nitin and his family over sharing of the common well water. On 2nd May, 2020 at about 4.30 pm, accused No. 1 Nitin came near the field of the deceased Netaji and started to uproot the mango and custard-apple trees by a JCB. Deceased restrained the accused No.1– Nitin. Thereupon the accused No. 1 threatened the deceased that he would eliminate the deceased and also abused the sister of the first informant.

3. After about 15 minuets, Nitin (accused No.-1), Kiran (accused No.-2), Manik (accused No.-3), Annasaheb (accused No.-4), Navnath alias Gotya (accused No. 5), Bajarang alias Chetan (accused No. 6), Prasad (the applicant), Nanda (accused No.8), Ranjana (accused No. 9), Varsha Holkar (accused No. 10) charged on the house of the deceased armed with sword, axe and sticks. They threatened to set the house on fire. Initially, the mother of the first informant and the first informant were assaulted by means of sticks. When the deceased came out of the home, the accused No. 2- Kiran alias Baban gave the blow of sword on the neck of the deceased. Accused No. 1-Nitin assaulted him by means of axe. The applicant - Prasad and accused Bajarang alias Chetan assaulted the deceased by means of sticks. Even after

the deceased fell down, the rest of the accused Manik (accused No.-3), Annasaheb (accused No.-4) and Navnath alias Gotya (accused No.-5) continued to unleash the blows by means of sticks. The deceased was shifted to hospital. He was pronounced dead. The first informant lodged the report.

4. The applicant and co-accused Annasaheb (accused No. 4) preferred application for bail.

5. By an order dated 3rd November, 2020, the learned Additional Sessions Judge, Sangali was persuaded to reject the prayer of the applicant. However, the application of Annasaheb (accused No. 4) was allowed.

6. The applicant has preferred this application asserting, *inter alia*, that the co-accused Annasaheb (accused No.-4), whose application was allowed, is similarly circumstanced. Identical role has been attributed to the applicant and Annasaheb (accused No.-4). Thus, the prayer of the applicant for bail could not have been rejected.

7. I have heard Mr. Nagesh Chavan, the learned Counsel for the applicant and Ms. P.N. Dabholkar, the learned APP for the State. With the assistance for the learned Counsel, I have perused the report under Section 173 of the Code and the documents annexed with it.

8. From the perusal of the material on record, it appears that the thrust of the allegations against the accused is that they committed rioting and murder of the deceased in prosecution of the common object of unlawful assembly. The first informant and the rest of the witnesses have attributed definite role to the applicant and the co-accused. The deceased was allegedly assaulted by means of sword by accused No. 2- Baban. Accused No.1-Nitin gave a blow by means of axe on the shoulder of the deceased. The applicant along with co-accused Bajarang alias Chetan (accused No.-6), Annasaheb (accused No.-4), Manik (accused No.-3) and Navnath alias Gotya (accused No.-5) allegedly assaulted the deceased by means of sticks.

9. It would be contextually relevant to note that the autopsy surgeon found three external injuries on the person of the deceased.

First, Incised wound vertically present, on right shoulder.

Second, CLW on mid part of occipital region.

Third, CLW 4 cm. below the second injury.

10. In the aforesaid context, the submission on behalf of the applicant that the role attributed to the applicant is identical to that attributed to co-accused Annasaheb

(accused No.-4) deserves to be appreciated. The learned Sessions Judge was of the view that though the role attributed to the applicant and accused No.-4 Annasaheb was of assaulting the deceased by means of sticks yet there were other factors which necessitated distinct treatment. Accused No. 4 -Annasaheb is an ordinary resident of Dehugaon, Dist. Pune. There was no previous animosity between the Accused No.-4 Annasaheb and the family of the deceased. Whereas the relations between the applicant and the family of the deceased were strained.

11. I am afraid, once it is noticed that the role attributed to the applicant and accused No.-4 Annasaheb was identical, the applicant deserved the same dispensation which was extended to accused No.-4 Annasaheb. It is imperative to note that the applicant like accused No.-4 Annasaheb was allegedly armed with sticks. The accused Nos. 1 and 2 were allegedly armed with deadly weapons. The deceased suffered three external injuries. In this view of the matter, if the role attributed to the applicant was found to be identical with the co-accused no.4, who was ordered to be released on bail, the applicant also deserves to be enlarged on bail.

12. The factors which were taken into account by the

learned Additional Sessions Judge in refusing to exercise the discretion in favour of the applicant, could have been addressed by imposing appropriate conditions.

13. The investigation is complete. The applicant is in custody for more than two years. The applicant is 20 years of age. It is likely that conclusion of trial may take time.

14. For the foregoing reasons, I am persuaded to release the applicant on bail.

Hence, the following order,-

:ORDER:

- (i) The applicant- Prasad Abhang Holkar (accused No.7) be released on bail in CR No.190 of 2020, registered with Kavathemahankal Police Station, District Sangli, on furnishing a P.R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount to the satisfaction of the learned Sessions Judge, Sangali.
- (ii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iii) The applicant shall not enter the limits of village Nagaj, Tal. Kavathemahankal, District Sangli,

including the area Momnacha Mala for the period of two years or till the conclusion of the trial whichever is earlier.

- (iv) The applicant shall regularly attend the proceedings before the Court of Session, Sangali.

[N. J. JAMADAR, J.]