



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

936 BAIL APPLICATION NO. 2150 OF 2023

GANGADHAR FAKIRRAO GHITRE

....Applicant

VERSUS

THE STATE OF MAHARASHTRA

.....Respondent

...

Advocate for Applicant : Mr. N.S. Gnanekar

APP for Respondents: Mrs. P.J.Bharad

...

WITH

CRIMINAL APPLICATION NO. 4409 OF 2023

PARMESHWAR SHEKANTH GHITRE

VERSUS

GANGADHAR FAKKRCHAND GHITRE AND ORS

...

Advocate for the applicant : Mr. P.s. Shinde

Advocate for Respondent No. 1 : Mr. N.S. Ghanekar

APP for Respondent/State : Mrs. P.J. Bharad

...

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 21.12.2023.

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 193 of 2023 registered with Shillegaon, District Aurangabad for the offences punishable under sections 302,

307, 326, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code.

2. Investigation was set in motion on the basis of the information given by Parmesh Shekhnath Ghitre. In nut shell it is alleged that on 26.06.2023 informant and his uncle namely Bhikchand were installing boundry Polls in the field in pursuance of the measurement carried as per Court's order. At that time accused persons namely Bhanudas Fakirrao Ghitre, Dnyaneshwar Eknath Ghitre and Eknath Fakirrao Ghitre uprooted the polls and raised assault on the first informant and others, consequently the deceased Bhikchand suffered serious injuries. The supplementary statement of the first informant has been recorded on 03.07.2023 wherein he narrates the incident in detail and alleges that accused Bhanudas inflicted a blow of iron rod on the head of the Bhikchand (deceased). Similarly, accused Yashwant inflicted a blow of iron angle on the head of the informant. Other accused namely Gangadhar (applicant), Devidas, Beerabai alleged to have assaulted Bhikchand, Sheknath and Sojarabai using iron angles, bambu sticks, stones, fists and kick blows. It appears that Bhikchand succumbed to the injuries. Consequently larger offence under

Section 302 of the Indian Penal Code came to be added. On 5.7.2023 applicant came to be arrested in pursuance of aforesaid crime. Since then he is behind the bar. The investigation progressed and the charge-sheet is filed.

3. Mr. Ghanekar, learned Advocate appearing for the applicant would submit that the inception of the incident is in a civil dispute over encroachment of the land. A decision of the Civil Court has gone against the informant and his family members. However, some ex-parte orders were obtained from the Court suppressing earlier order to carry measurement of land, which was objected by the accused persons. He would point out that in FIR makes false and omnibus allegations to implicate all family members of accused. He would submit that allegations against the applicant are omnibus. Referring to the statements of the eye witnesses he would submit that there is inconsistency as regards the role of the applicant. Further injuries sustained by Bhikchand are not attributed to role of applicant. At the most his presence on the spot can be affirmed on the basis of evidence collected during the investigation. The investigation in the matter is complete, the charge is filed. The trial would take its own course. The applicant is aged about 65

years. The applicant suffered incarceration for 5 months by this time. Hence urged to release applicant on bail.

4. The learned APP as well as learned Advocate appearing for the informant vehemently oppose the prayer. They would contend that the accused persons arrived on the spot in persuasion of common object. They formed unlawful assembly. They were holding deadly weapons in their hands and raised brutal attack, resulting into the death of Bhikchand and serious injuries to the informant Parmeshwar. They would point out that the applicant is named in the FIR, so also in the statements of the eye witnesses. His presence on the spot is confirmed even in the Vidco recording of the incident and a transcript is made part of charge-sheet. Mr. Shinde, learned Advocate for the Complainant would points out criminal antecedents of the accused persons. He relied on the Video Screen shots depicting the presence of the applicant with a wooden log in hands. He urged that heard that there is sufficient evidence to bring home the complicity of the applicant in the commission of offence.

5. Having considered the submissions advanced, and

investigation papers, apparently the incident was reported to police by information Parmeshwar who himself injured eye witness. He names the accused Bhanudas, Dnyaneshwar and Eknath to have uprooted the angles and raised assault on his person. However omnibus allegations are made against other accused persons including the applicant. In his supplementary statement informant specifically attributes the role against the accused Bhanudas to have inflicted head injury to the Bhikchand using iron angle. Similarly he attributes the role against accused Yashwant to have inflicted injuries by iron angle on his head while making general allegations against all other accused persons to have assaulted the informant and other witnesses by weapons like iron angle, wooden log and stones.

6. Although the charge-sheet contains the statements of many eye witnesses, the statement of Vajir Akbar and his wife Afsarabee assumes significance since they are an independent witnesses. Perusal of the said statements show that Bhanudas is attributed role in causing head injury to Bhikchand, whereas, Yeshwant is attributed role in causing injury to Parmeshwar.

The Applicant and others are commonly attributed role in the assault on Bhikchand without specification. Pertinently, other injured witnesses are also unspecific as regards the role of the present applicant. Medical certificate of Parmeshwar shows simple injury. The applicant is not attributed any role in causing injuries to Rameshwar. The postmortem notes depicts that the deceased Bhikchand had suffered injury over frontal parietal temporal region and multiple abrasions on upper chest. It is difficult to connect the applicant with any such injuries.

7. The applicant is behind the bar for last 5 months. The investigation in the matter is over. The charge-sheet is filed. The applicant is aged about 65 years of age. Trial would take its own course. Taking into the account the over all survey of material placed on record the further detention of the applicant would not be necessary, hence a case is made out for grant of bail on certain conditions.

O R D E R

- i) Bail Application is hereby allowed.
- ii) The applicant – Gangadhar Fakirrao Ghitre be released on bail in connection with Crime No. 193 of 2023 registered with Shillegaon, District

Aurangabad for the offences punishable under sections 302, 307, 326, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code on his furnishing P.B. & S.B. of Rs. 50,000/- (Rs. Fifty Thousand), on the following conditions :-

- a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective dates of hearing before the Sessions Court, Vaijapur, District Aurangabad.
 - c] The applicant shall not enter Raipur Tq. Gangapur, District Aurangabad for a period of six months from the date of his release.
- iii) Bail application is accordingly disposed off.
- iv) Criminal Application No. 4409 of 2023 to assist the learned APP is allowed and disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

mahajansb/