

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3063 OF 2023

Babaji Laxman More ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 2920 OF 2023

Kunal Gajanan More ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ajit Kenjale, a/w Azharuddin Khan and Prachi Deokar,
for the Applicant in ABA/3063/2023.

Smt. Ashwini Takalkar, APP for the State/Respondent.

IO Vishwajit Ghodake, PI Satara Taluka Police Station,
present.

CORAM: N. J. JAMADAR, J.

DATED: 7th DECEMBER, 2023

ORDER:-

1. These applications are for pre-arrest bail in connection with CR No.242 of 2023, registered with Satara Taluka Police Station, Satara, for the offences punishable under Sections 326, 324, 323, 143, 146, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code").

2. When ABA/2920/2023 was listed before the Court on 20th October, 2023, this Court had granted interim bail to applicant Kunal More ascribing reasons. Subsequently, in

ABA/3063/2023 interim protection came to be granted to applicant Bababji Laxman More as well.

3. I have heard the learned Counsel for the applicant and the learned APP for the State.

4. Shivaji Shankar Pawar, the father of Rahul (the deceased) had initially lodged a report on 2nd June, 2023 to the effect that accused Ganesh More had teased the first informant's niece and thereupon his nephew Nayan Pawar had tried to reason with Ganesh More. Enraged thereby, on 6th May, 2023, in between 2.00 am. to 3.00 am. 25 to 30 persons from village Rajapuri had come to his house. They insisted that Nayan Pawar should come out of the house. When the deceased went out of the house to pacify them, 25 to 30 persons assaulted the deceased by means of fist and kick blows. On 11th May, 2023, he was initially admitted at Symbiosis Hospital, Satara. As his condition deteriorated he was shifted to Jahangir Hospital, Pune, on 15th May, 2023.

5. On the basis of the said statement, initially crime was registered for the offence punishable under Sections 326, 324, 323, 143, 146, 147, 148 and 149 of the Penal Code. On 4th June, 2023, in the supplementary statement the first informant alleged that on the night of occurrence co-accused

Ganesh More, Akash More and Suyog Gurav had assaulted the deceased by means of wooden stick and accused Yash Nikam had assaulted the deceased by means of iron rod. Gajanan More had kicked the deceased from behind. Due to the said blow, the deceased fell down and thereupon co-accused Tushar Salunkhe, Avishkar Salunkhe, Ganesh More, Jagdish Salunkhe, Prathamesh Salunkhe, Sankalp Salunkhe, Pratik Salunkhe and 15 others had unleashed fist and kick blows and the deceased sustained grievous injury.

6. A further supplementary statement came to be recorded on 27th June, 2023. In the said statement, the role of assault by means of fist and kick blows was also attributed the applicant Kunal More, in addition to other co-accused. The first informant further alleged that at that time the applicant Babaji More and others were also present in front of his house. As the deceased eventually succumbed to the injuries on 15th July, 2023, an offence punishable under Section 302 of the Penal Code came to be added.

7. The learned Counsel for the applicants submitted that the applicants were not named in the FIR lodged on 2nd June, 2023. Nor the applicants were named in the further statement of the first informant, which was recorded on 4th

June, 2023 though the first informant had attributed the role of assault by means of stick to co-accused Ganesh More, Akash More and Suyog Gurav and by means of an iron rod to co-accused Yash Nikam and by means of fist and kick blows to other named co-accused.

8. It was further submitted that in the further supplementary statement recorded on 25th June, 2023 for the first time the names of the applicants were disclosed as assailants. In the said statement also the role of assault by means of fist and kick blows only was attributed to the applicant Kunal More. The applicant Babaji More was allegedly present in front of the house of the first informant. However, no role of assault has been attributed to the applicants. Therefore, in the backdrop of the nature of the occurrence initially reported and the improvements which were subsequently made to rope as many persons as possible and the time-lag between the alleged occurrence and the death of the deceased, according to the learned Counsel for the applicants, offence under Section 302 of the Penal Code cannot be said to have been *prima facie* made out qua the applicants. Therefore, the applicants deserve the exercise of discretion. It was further submitted that there is material to

show that the first informant attempted to extort money by threatening to falsely implicate persons in the alleged murder of the deceased.

9. The learned APP submitted that as the applicants have been arraigned for an offence punishable under Section 302 of the Penal Code, they do not deserve the exercise of the discretion. It was urged that the applicants were alleged to be the members of the unlawful assembly and, therefore, the fact that role of assault by means of deadly weapons has not been attributed to the applicants is of no consequence.

10. I have carefully perused the allegations in the FIR and supplementary statements of the first informant and the statement of witness Nayan Pawar and the injury certificate of the deceased. As is evident, it appears that the prosecution version as regards the complicity of the accused developed gradually. In the FIR dated 2nd June, 2023, apart from Ganesh More no other accused was named albeit it was alleged that 25 to 30 residents of village Rajapuri had come to the house of the first informant at the dead of the night and assaulted the deceased. In the supplementary statement dated 4th June, 2023, the role of assault by means of weapons i.e. stick and iron rod was attributed to few named

accused and by means of fist and kick blows to others. In the said supplementary statement as well the applicants were not named. In the further supplementary statement dated 25th June, 2023 applicant Kunal More was clubbed in the group of assailants, who allegedly assaulted the deceased by means of fist and kick blows. Applicant Babaji More was alleged to be present at the scene of occurrence. No role of assault, *prima facie*, seems to have been attributed to Babaji More.

11. Nayan Pawar, the cousin of the deceased, whose statement came to be recorded on 15th August, 2023 however named the applicants as the members of the unlawful assembly which had allegedly committed the offence of rioting and murder in prosecution of the common object.

12. In the backdrop of the aforesaid material, I find substance in the submission of the learned Counsel for the applicant that a *prima facie* case for grant of pre-arrest bail is made out. The applicants were not in the frame till 25th June, 2023. Applicant Kunal More had allegedly assaulted the deceased by means of fist and kick blows only. At the same time, there are allegations that named co-accused had assaulted the deceased by means of dangerous weapons like

stick and iron rod. Applicant Babaji More has not been attributed with the role of assault at all. He was sought to be roped in for being present at the scene of occurrence. Evidently, the role of the applicants appears to be distinct from the role of the named co-accused assailants, who allegedly assaulted the deceased by means of stick and iron rod.

13. Secondly, the omission to name the applicants at the earliest possible opportunity also *prima facie* lends heft to the submission on behalf of the applicants. Since 25 to 30 persons had allegedly assaulted the deceased, the question as to whether the applicant could be roped in by invoking the provisions contained in Section 149 of the Penal Code may also warrant consideration at the trial.

14. Investigation seems to be complete for all intent and purpose. Charge-sheet has been lodged. The applicants also appear to have roots in society and possibility of fleeing away from justice seems to be remote.

15. In this view of the matter, I am inclined to hold that despite the applicants having been arraigned for the offence punishable under Section 302 of the Penal Code, the

applicants deserve the exercise of discretion. Thus, the orders of interim bail deserve to be made absolute.

16. Hence the following order:

: O R D E R :

- (i) Order of interim bail dated 31st October, 2023 in ABA/3063/2023 and order of interim bail dated 20th October, 2023 in ABA/2920/2023, are made absolute on the terms and conditions incorporated therein.
- (ii) In addition, the applicants shall regularly attend the proceedings before the jurisdictional court.
- (iii) Applications stand disposed.

[N. J. JAMADAR, J.]