

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3034 OF 2023**

Nitin Gajanan Gotarne

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Mr. G. T. Kanchanpurkar, for Applicant.

Mr. M. G. Patil, APP for State.

Mr. Sanjeev P. Kadam with Mr. Prashant Raul i/b Mr. Kishor
H. Hase, for Complainant/First informant.

Mr. S. C. Wangade, PSI, Vashind Police Station, Present.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 31st OCTOBER, 2023.

PRONOUNCE ON:- 6th NOVEMBER, 2023.

ORDER:-

1) Heard the learned counsel for the applicant and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 58 of 2023, registered with Vashind Police Station, for the offences punishable under Sections 302, 307, 326, 354, 323, 504, 506, 143, 147, 148 and 149 of Indian

Penal Code, 1860 ("the Penal Code"), Section 37 (1)(A) read with 135 of Maharashtra Police Act, 1951.

3) Elections to the post of Director of Vasind Co-operative Society Ltd., were held on 19th March, 2023 in which Ramchandra Kashinath Botkondle (the deceased), the brother of the first informant – Mahendra Botkondle, was elected. The deceased defeated Vilas Partole of the accused party. At about 8.30 pm, the victory procession was passing from in front of the house of the accused Ganesh Partole. The first informant alleged that the applicant and the other 16 accused formed an unlawful assembly. They were armed with various weapons. The applicant was armed with a stick. The members of the unlawful assembly started to abuse and assault the members of the first informant party, who were proceedings towards the temple. Co-accused Mahesh Gotarne allegedly assaulted the deceased by means of an iron rod on his left hand, chest, head and neck. The deceased fell down. Thereafter, all the members of the unlawful assembly assaulted the deceased by means of fist and kick blows. The applicant, co-accused Ganesh, Vilas and Darshan allegedly assaulted the deceased by means of sticks. A lady came to the rescue of the deceased. She was also assaulted. The members of

the unlawful assembly allegedly outraged the modesty of the said injured lady.

4) Mr. Kanchanpurkar, the learned Counsel for the applicant, submitted that in respect of the very same occurrence, a report was lodged by Ganesh against the members of the informant party leading to registration of FIR No.57 of 2023, prior in point of time, at Vashind Police Station for the offences punishable under Sections 143, 147, 148, 149, 307, 326, 324, 323, 504 and 506 of Indian Penal Code, 1860 (“the Penal Code”), Section 37 (1) (A) read with 135 of Maharashtra Police Act, 1951.

5) The learned Counsel for the applicant further submitted that the deceased died on 28th March, 2023, as he suffered cardiac arrest. Thus, prima facie, the deceased cannot be said to have met a homicidal death.

6) Mr. Kanchanpurkar further urged the injury certificate indicates that the deceased had sustained three simple injuries when he was initially admitted at Primary Health Center, Vashind. An assault by 17 persons by means of various weapons, as alleged, would not result in mere three simple injuries. Thus, many of the co-accused have been released on regular and pre-arrest bail. The investigation is complete and the charge-sheet has also been lodged. Therefore, at this length of

time, the custodial interrogation of the applicant who is a police official is not warranted. Therefore, the applicant be enlarged on pre-arrest bail.

7) Mr. Patil, the learned APP resisted the application. It was submitted that the applicant has been specifically named in the FIR as a member of the unlawful assembly, armed with a stick. At this stage, it cannot be said that the death which the deceased met had no nexus with the assault perpetrated by the applicant and the co-accused. Therefore, the applicant does not deserve the exercise of discretion.

8) Mr. Kadam, the learned Counsel for the first informant, also resisted the prayer for pre-arrest bail. Inviting the attention of the Court to the external injury noted in Clause 17 of Post Mortem Report, especially the fact that the deceased had sustained a fracture of ulna, Mr. Kadam would urge that the death of the deceased was the consequence of the assault mounted by the applicant and the co-accused. Since the applicant is a police personnel, there is a strong possibility of tampering with evidence and threatening witnesses. Therefore, the Court may not exercise the discretion in favour of the applicant.

9) From the perusal of the allegations in the FIR, it becomes evident that the genesis of the occurrence is in the election to the Vasind Co-operative Society Ltd. Prima facie, it appears that as the victory procession came in front of the house of Ganesh, the co-accused, an altercation ensued and, thereafter, the members of both the groups had virtually a free fight. As noted above in the FIR lodged by the Ganesh being leading to CR No. 57 of 2023, 17 named and other 4 to 5 unknown persons, were allegedly the members of the unlawful assembly formed by the informant party.

10) In this backdrop, the role attributed to the applicant, the nature of the injuries sustained by the deceased and their co-relation with the assault attributed to the particular accused assume significance. The first informant alleged that the applicant was armed with a stick. In the FIR, the allegation of unleashing the blows by means of an iron rod on the person of the deceased is attributed to co-accused Mahesh. It is alleged that due to the blows by means of an iron rod given by the co-accused Mahesh, on the left hand, head, chest and neck of the deceased, the latter fell to the ground. Thereafter, the rest of the members of the unlawful assembly including the applicant assaulted the deceased.

11) It would be contextually relevant to note that the injury certificate of the deceased issued by the Primary Health Center records three simple injuries. The injury certificate issued by the Pranav Multispeciality Hospital indicates that the deceased had suffered CLW on the scalp (frontal region). It further records that for ulna fracture the deceased was operated upon and plating was done on 20th March, 2023. On 28th March, 2023 at about 7.45 am, the deceased suffered Anterior Wall MI (myocardial infarction). It is true the PM report refers to the fact that the deceased had suffered a fracture on the ulna. At the same time the internal examination revealed that there were coronary artery blockages.

12) In the aforesaid view of the matter, especially the fact that the deceased had suffered three simple injuries in the alleged occurrence, whether the deceased met a homicidal death on account of the injuries sustained in the alleged occurrence, prima facie appears to be a matter for trial. Moreover, all these injuries are prima facie attributable to the assault by co-accused Mahesh. In a situation of this nature, where two groups, comprising a large number of persons on each side, were allegedly involved in the occurrence, the aspect as to whether a particular member of the unlawful assembly had shared the

common object of the unlawful assembly to commit the alleged offence or knew that those offences would be committed in prosecution of the common object of the unlawful assembly, merits consideration.

13) As regards the allegations regarding outraging the modesty of the lady, prima facie, it appears that those allegations were not initially made. In any event, in a case of such a mammoth rioting the question as to whether the assault or use of criminal force to the injured lady was with intent to outrage her modesty would also be a matter for trial.

14) In the aforesaid view of the matter, at this length of time, where the investigation seems to be practically complete for all intent and purpose and the charge-sheet has been lodged, custodial interrogation of the applicant does not seem to be warranted. Since the applicant is a police personnel, possibility of fleeing away from justice seems to be remote. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

15) Hence, the following order:-

ORDER

I) In the event of arrest of the applicant in connection with C.R. No. 58 of 2023, registered with Vashind Police

Station, for the offences punishable under Sections 302, 307, 326, 354, 323, 504, 506, 143, 147, 148 and 149 of Indian Penal Code, 1860 ("the Penal Code"), Section 37 (1) (A) read with 135 of Maharashtra Police Act, 1951, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

III) The applicant shall co-operate with the investigation and attend Vashind police station on 9th and 10th November, 2023 in between 10.00 am to 1.00 pm and, thereafter, as and when directed by the Investigating Officer.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The application stands disposed.

[N. J. JAMADAR, J.]