



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 701 OF 2023

Vaishnavpratap singh @ Sonu s/o Indrapalsingh Pawar and another
Vs.
State of Maharashtra, Through PSO Arjuni Morgaon, District Gondia

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. M. Jaltare, Advocate for applicants.
Ms. Sneha Dhote, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/12/2023

1. By this application, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.29/2023 registered with Police Station Arjuni Morgaon, District Gondia for the offences punishable under Sections 143, 147, 148, 149, 302, 326, 504 and 506 of the Indian Penal Code and Sections 37(1)(3) and 135 of the Maharashtra Police Act. Both the applicants are arrested on 14.02.2023.

2. The applicants are arraigned as an accused in the above crime on the basis of report lodged by Ramdas Keshav Maske on an allegation that he is the owner of the agricultural land Gat bearing No.1055. There is a dispute between the present applicants and other co-accused on account of the said land and litigation is

pending in the Court. On 14.02.2023, informant along with his son Vilas (deceased), one Sudhakar and some labours were working in the agricultural field, at the relevant time present applicants along with other co-accused entered in the field holding wooden logs in their hands and the other co-accused were holding swords and iron rods. The present applicants and another co-accused came along with some unknown persons. There was hot exchange of words between Abhisheksingh, who is the co-accused and, thereafter, they started assaulting the informant and his son. It is alleged that as informant and his son apprehended the serious injuries or the death in the hands of the present applicants and other co-accused. They ran away from the spot of incident, but the applicants and another co-accused chased them. After chasing, co-accused Jitendra Sonagre gave a blow of sword on the head of the deceased, due to which deceased sustained grievous injuries and was lying in the pool of blood. After he fallen down, due to injuries, the applicants have assaulted him. It is further alleged that these applicants and other co-accused also assaulted the informant. Due to the injuries sustained by the deceased, deceased succumbed to the death and present informant has sustained the grievous injuries. On the basis of the said report, police have registered the crime against the present applicants and other co-accused.

3. Learned Counsel Mr. Jaltare for the applicants submitted that there is no dispute as to the fact that there is a previous enmity between the family members of the applicants, applicants and the informant and his family members and the litigation is pending in the Court. He submitted that the informant and his son were the aggressors in the agricultural land, as they have encroached over the land of the present applicants and other family members. He further invited my attention towards the recitals of the FIR and submitted that even the allegations are taken as it is, general allegations are made against the present applicants. As far as the allegations regarding the assault on the deceased is concerned, it is against the co-accused Sumitsingh Parihar and Jitendra Sonagre. Even there is no whisper that present applicants have given a single blow on the person of the deceased or on the person of the informant. He further invited the attention towards the statements recorded under Section 164 of Cr.P.C. wherein the informant has specifically assigned the role of the assault on him and on the deceased to Jitendra Sonagre and Sumitsingh Parihar and not to the present applicants. He submitted that the incriminating articles are also seized at the instance of the co-accused and not at the instance of the present applicants. The statements of the other witnesses also shows that the general allegations are made against the present applicants that they have also assaulted the deceased and the informant.

The incriminating articles seized including the clothes of the present applicants/accused persons and forwarded to the Chemical Analysis (C.A.). He submitted that even the C.A. reports show that no blood stains are found either on the clothes of the applicant No.1 or on the clothes of the applicant No.2. Thus, mere presence of the present applicants are shown at the spot of incident. There are two spots. Initial spot is in the agricultural field in Gat No.1055. The statements of the witnesses show the presence of the present applicants in the agricultural field but their statements nowhere show the presence of the present applicants at the subsequent place of incident when deceased and the informant were chased by the other co-accused. Now, the investigation is completed, charge-sheet is filed. The applicants are already in custody since their date of arrest i.e. from 14.02.2023. Now, their further custody is not required, as no purpose will be served by keeping them behind bar. He further submitted that as far as the causing of the death to the deceased Vilas is concerned, no role is attributed to the present applicants. In view of that, applicants be released on bail, considering the investigation is completed and charge-sheet is filed. He placed reliance on **Criminal Application (BA) No.921/2019 Nikhil @ Golu Lalsing Maliye Vs. State of Maharashtra** decided on 15.10.2019 and **Criminal Application (BA) No.387/2021 Hardik Dipak Urgunde Vs. State of Maharashtra through Police Station, Wani,**

District Yavatmal dated 08.06.2021 wherein this Court has considered the statements under Section 161 of Cr.P.C. and 164 of Cr.P.C. and released the accused on bail.

4. Per contra, learned APP vehemently submitted that the offence is of grievous nature. The applicants in furtherance of their common object with the other co-accused entered into the field of the informant and assaulted them. The two co-accused chased the deceased and the informant and gave a repeated blow and deceased has sustained as many as 19 injuries. She further invited my attention towards the statement of the informant, statement of wife of the deceased and submitted that there is allegation against the present applicants that present applicants were holding wooden log in their hands and assaulted the deceased as well as the informant. She further submitted that the incriminating articles i.e. blood stained clothes are seized at the instance of the present applicants. The weapons which are assigned to the present applicants are also seized wherein the blood stains are found. Thus, there is a *prima facie* material against the present applicants and prays for rejection for the application. Learned APP further submitted that consideration for the grant of bail requires to be considered which says that while considering the bail application in the serious offences, the gravity of the

offence, the involvement of the present applicants and the role attributed to them, and likelihood of their fleeing away is to be considered. Here in the present case, the offence is of serious nature. If the applicants are released on bail, they will tamper with the prosecution evidence and prays for rejection of the application.

5. Heard learned Counsel for the applicants and learned APP for the State. Perused the investigation papers. The deceased in this crime is one Vilas. The report was lodged by his father Ramdas Maske. As per the report dated 14.02.2023, the present applicants and other co-accused entered in the agricultural field bearing No.1055 when the informant and the deceased was working. The recitals of the FIR shows that all the accused persons including present applicants were holding weapons in their hands and there was hot exchange of words between them. The allegation further shows that all the accused including the present applicants assaulted the deceased and the informant therefore, they fled away from the spot of incident, but co-accused Jitendra Sonagre and Sumitsingh Parihar chased them and Jitendra Sonagre has given a blow of sword and Sumitsingh Parihar was also holding sword who has also given a blow by sword on Vilas. The further allegation is that these accused Sumitsingh Parihar and Jitendra Sonagre, thereafter pulled the

informant from the tractor and assaulted them. Thus, the entire allegation regarding the assault as far as the injury sustained by the deceased and the informant is concerned, assigned to the co-accused Jitendra Sonagre and Sumitsingh Parihar. As far as the present applicants are concerned, general allegations are made that all the accused have assaulted them. No specific role is attributed to the present applicants. It is pertinent to note that the weapons which are assigned to the present applicants are wooden log are also not seized at the instance of the present applicants but the same are seized at the instance of Abhisheksingh Satyapalsing Pawar.

6. The learned APP placed on record the C.A. reports which shows that no blood stains are found either on the clothes of the applicant No.1 or clothes of the applicant No.2. Admittedly, the blood stains are found on the weapons but the said weapons are not seized at the instance of the present applicants. The investigation is also completed. The statement of the witnesses recorded under Section 164 of Cr.P.C. also assigned the specific role to the co-accused Sumitsingh Parihar and Jitendra Sonagre. Considering the entire material which connected during the investigation by the Investigating Officer, it reveals that no specific role is attributed to the present applicants. Their presence reveals at the initial stage and not at the time of second

incident. Now, investigation is already completed, charge-sheet is filed. Considering the role attributed to the present applicants and the investigation papers, the present applicants are made out the case to release them on bail.

7. Looking to the aforesaid nature of the facts from the investigation papers while considering the bail application, I am of the view that the applicants can be released on bail. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant No.(1) **Vaishnavpratap singh @ Sonu s/o Indrapalsingh Pawar** and No.(2) **Rakesh s/o Narendrasingh Pawar** be released on bail in connection with Crime No.29/2023 registered with Arjuni Morgaon, District Gondia for the offence punishable under Sections 143, 147, 148, 149, 302, 326, 504 and 506 of the Indian Penal Code and Sections 37(1)(3) and 135 of the Maharashtra Police Act, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

(iii) The applicants are directed to report police Station Arjuni Morgaon till conclusion of the trial.

(iv) The applicants shall not enter into the village Shirol/Mahagaon till conclusion of the trial.

(v) The applicants shall not induce, threat or promise any other witnesses who were connected with the alleged incident.

(vi) The applicants shall furnish their cell phone numbers and addresses with the address proof.

(URMILA JOSHI-PHALKE, J.)