



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1699 OF 2023

Datta @ Dattatray s/o Haushiram Tangadkar,
Age 27 years, Occ. Education,
R/o. Ambi Khalsa, Tq. Sangamner,
Dist. Ahmednagar.

... Petitioner

VERSUS

1) The State of Maharashtra,
Through the Police Inspector,
Ghargaon Police Station Ghargaon,
Tq. Sangamner, Dist. Ahmednagar.

2) Sagar s/o Popat Tangadkar,
Age 24 years, occ. Education,
R/o. Ambi Khalsa, Tq. Sangamner,
Dist. Ahmednagar

... Respondents.

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Advocate for Petitioner : Mr. K. N. Shermale
A.P.P. for Respondent No. 1 : Mr. V.K. Kotecha
Advocate for Respondent No. 2 : Mr. Vinod Y. Bhide

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 12.01.2024

PER COURT :

Heard. Rule. Rule is made returnable forthwith. Learned APP waives service for the respondent No.1/State and learned advocate Mr. Bhide waives service for the respondent no. 2. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By invoking the powers under Section 482 of the Code of Criminal Procedure, the petitioner who is accused no. 4 in Crime No. 124/2020 registered with Ghargaon police station Ghargaon Tq. Sangamner Dist.

Ahmednagar for the offences punishable under Sections 307, 324, 143, 147, 148, 188, 269 of the Indian Penal Code, under Section 37(1), 135 of Maharashtra Police Act, under Section 51 of the Disaster Management Act, 2005, under Section 4 of Prevention of Epidemic Diseases Act, 1897 and under Section 11 of Maharashtra Covid-19 Virus Outbreak Rules, 2020 is seeking its quashment.

3. In short the allegations as can be made out from the F.I.R. and the charge-sheet are to the effect that on 16.05.2020 at about 9 a.m. the respondent no. 2's father by name Popat had taken the family's tractor for ploughing the field of one Rajendra Devram Tangadkar. At about 10 p.m. since even their own land was to be ploughed, the respondent no. 2 had dropped his father Popat to their field on a motorcycle. When the respondent no. 2 returned back within half to three quarter of an hour, he received a phone call from his father but the father was unable to speak. Since his father was suffering from blood pressure and diabetes he thought that there was some emergency. The respondent no. 2 along with his cousins Sudarshan and Kishor started proceeding to his field on a motor cycle. On the way they saw three motorcycles speeding along a streamlet. They could identify in the headlight of the motorcycle that those were the accused persons including the petitioner while proceeding towards the village. They also noticed that accused Kalpana Surendra Tangadkar also was proceeding towards her village. When they reached the spot they saw that his father Popat had sustained a head injury and had become unconscious. When they enquired with the tractor driver Shantaram Dudhwade he narrated about all the accused persons having assaulted Popat with axe, sticks and kicks and fists blows. He also told about having seen these accused persons in the headlight of his tractor and they having fled on the motorcycles. Popat was shifted to Saiganesh Hospital Sangamner in an ambulance and he is under treatment.

4. The F.I.R. alleges that there has been a dispute between accused

Surendra and his brother Rajendra on account of land. Since in the morning his father Popat had ploughed Rajendra's land with a tractor, Suredra was annoyed and for that reason the accused had assaulted Popat.

5. The matter was reported to police by the respondent no. 2 on 17.05.2020 at 1507 hours and the crime was registered.

6. Learned advocate Mr. Shermale for the petitioner would submit that there is unexplained delay in lodging the F.I.R. He would point out from the F.I.R. that the place of incident was barely 10 k.ms. from the police station. Though the incident is alleged to have taken place on 16.05.2020 at about 2230 hours, the matter was reported to police after about 17 hours. There is no explanation coming forth for the delay.

7. Mr. Shermale would further submit that though petitioner's name appears in the F.I.R., no specific and exclusive role is attributed to him in carrying out the assault which is attributed to prime accused Surendra and his wife Kalpana. No such allegations about petitioner having carried any weapon and having used it can be found.

8. Mr. Shermale would then take us through the charge-sheet and would submit that even the witnesses being relied upon by the prosecution have merely named the petitioner and have not attributed any role to him. The petitioner is being falsely implicated. There is no incriminating material to reveal his complicity in commission of the crime. There was no motive attributable to him. It would be abuse of process of law if based on such vague allegations he is made to face the trial. He has been selected to the post of driver in the police department and his prospective employment is at stake due to registration of the crime and prays to exercise the discretion in his favour.

9. Per contra, learned A.P.P. and the learned advocate for the respondent no. 2 would strongly oppose the petition. They would submit that there is

enormous material collected by the prosecution revealing petitioner's complicity in commission of the crime. It was a premeditated incident. Popat had ploughed field of Rajendra who is the real brother of accused Surendra. All the accused persons were annoyed and with premeditation assaulted him. They would submit that since the prosecution has also been resorting to Section 143 and 149 of the Indian Penal Code, the incident having taken place by forming an unlawful assembly and for achieving the common objective, in view of the motive being attributed, the crime cannot be quashed merely by pointing out that the petitioner has not been stated to have carried any weapon.

10. There are consistent statements of the witnesses, apart from the reference in the F.I.R. about the petitioner's presence. Even the conduct of the accused persons including the petitioner in fleeing from the spot would be a fact relevant being the subsequent conduct soon after commission of the crime.

11. Papers reveal that since the date of incident way back in the year 2020 and several attempts having been made, due to the critical condition of the injured Popat his statement could not be recorded. There is a medical evidence revealing he having sustained a deep incised wound with a fracture of skull. Another incised wound near left eyebrow, incised wound on the little finger and multiple contusions and abrasions on the back and certifying the injuries to be grievous. It is a matter of commission of crime punishable under Section 307 of the Indian Penal Code which is grave and serious and punishable up to life imprisonment. The request of the petitioner for quashment, apart from being not sustainable on merits cannot be considered even by taking any lenient view merely because pendency of the crime and the criminal case would be an impediment in securing a job.

12. It is necessary to note that considering the grievous injuries sustained by Popat as certified by the doctors, it is indeed a matter which would

constitute *prima facie* an attempt to murder punishable under Section 307 of the Indian Penal code. As far as the role attributable to the petitioner is concerned, not only in the F.I.R. but even in the statements of the several witnesses he has been named and have been stated to have accompanied the other accused. There is an eye witness named Shantaram Dudhwade.

13. In view of the aforementioned facts and circumstances, when the petitioner *prima facie* was a member of an unlawful assembly which was apparently formed for carrying out assault on Popat and there is sufficient material revealing his complicity, in our considered view, this is not a fit case to invoke the powers under Section 482 of the Code of Criminal Procedure.

14. The Criminal Writ Petition is dismissed.

15. However, it is made clear that the observations made herein above are confined to the decision of the petition.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-