

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2092 OF 2016

Shri Vijay Rajendra Gambhire

... Applicant

Vs.

The State of Maharashtra

.. Respondent

with

BAIL APPLICATION NO.2160 OF 2016

Shri Ganesh @ Ranjeet Shankar Yadav

... Applicant

Vs.

The State of Maharashtra

.. Respondent

and

BAIL APPLICATION NO.2368 OF 2016

Shri Ajay Dilip Lalde

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.A.A. Desai for the Applicant in BA/2092/2016 and 2160/2016

Mr.Debajyoti Talukdar for Applicant in BA/2368/2016

Mr.S.H. Yadav, APP, for State in BA/2092/2016

Mr.Vionod Chate, APP, for State in BA/2160/2016

Mr.Y.M. Nakhwa, APP, for State in BA/2368/2016

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 12, 2017

P.C. :

1. All these Bail Applications are prosecuted for the offences punishable u/s 302, 307, 143, 147, 148, 149, 120B and 153 A of the Indian Penal Code. One Shaikh Mobin Mohammed Sadiq, brother of the deceased is the complainant. It is the case of the prosecution that on 2.6.2014 in the late evening, there was a meeting conducted by one Hindu Rashtra Sena at Hadapsar on account of defiling of the statue of King Shivaji Maharaj and therefore, one co-accused Dhananjay Desai instigated speeches and thereafter all these applicants/accused alongwith the co-accused armed with weapons on two wheelers started moving on road. At around 9pm, when the deceased Shaikh Mohsin, the elder brother of the complainant, was proceeding alongwith his colleague Riyaz for dinner. At that time, the deceased was wearing a pastel green colour shirt and had sported a beard, and therefore, the applicants/accused and the co-accused targeted Mohsin and his friend Wasim and started assaulting him with hockey sticks, bats and stones. Riyaz could escape, however, Mohsin, who was riding the motor cycle, was brutally beaten up by

all these co-accused and the accused, was badly injured. The complainant was given information and he immediately rushed to the spot. He found his brother severely injured and lying on the road. At that time, the complainant prayed for help from the passersby and thereafter they police arrived. When Mohsin was shifted to the hospital, he had succumbed to the injuries. Hence, he gave complaint against the assailants. Pursuant to the information, the offence was registered at C.R. No.305 of 2014 at Hadapsar police station, Pune. The original applicants/accused Nos.9 and 10 were arrested on 4.6.2014 and accused Ganesh Yadav was arrested on 3.6.2014. Since then, they are in prison and hence, these Bail Applications.

2. The learned Counsel for the applicants/accused submitted that the applicants/accused are innocent. They were not present at the time of the incident. It is submitted that 11 co-accused are granted bail by orders of this Court dated 21.4.2016, 16.6.2016 and 23.6.2016. He submitted that the accused, who were released on bail, have played identical role and, therefore, the learned Counsel prays for parity for the present applicants/accused. He has also submitted that there are no

criminal cases pending against the present applicants/accused.

3. The learned Prosecutors have opposed these applications. They relied on the statements of the witnesses so also the police officers, who have seen the applicants/accused on the motor cycle rushing towards the spot armed with hockey sticks, bats. They also relied on the injury certificate of two injured i.e., Wasim and Ezaj Bhagban. They also relied on the postmortem report of Mohsin. The learned Prosecutors argued that the applicants/accused were very much involved in the offence of murder of Mohsin and they are not to be released on bail. It is further submitted that the applicants/accused had taken a life of an innocent person and it is a serious offence.

4. Perused the FIR, the statements of the witnesses, the injury certificates and the postmortem reports. From the record and the statements of the witnesses, it is apparent that the applicants/accused were present at the time of the incident. There are statements of the witnesses and the police officer that the applicants/accused had attended a meeting of Hindu Rashtreeya Sena on the same day half an hour before the actual incident of the assault. I have perused the order passed by this Court on

5.3.2015 while rejecting the Bail Application of one Dhananjay Desai, the co-accused in Criminal Bail Application No.2337 of 2014. It shows that the co-accused Dhananjay Desai was the one who was the speaker in the meeting and he instigated the audience. It is observed that in the said order of this Court that the transcript of the speech given by Dhananjay Desai was sufficient to show that he had incited the feelings of the religious discrimination. The meeting was held half an prior to the incident of assault. The applicants/accused otherwise had no other motive such as any personal enmity against the innocent deceased Mohsin. The fault of the deceased was only that he belonged to another religion. I consider this factor in favour of the applicants/accused. Moreover, the applicants/accused do not have criminal record and it appears that in the name of the religion, they were provoked and have committed the murder.

5. Under such circumstances, I allow the Bail Applications on the following terms:

- i) The applicants/accused shall be released on bail upon furnishing P.R. Bonds in the sum of Rs.40,000/- each with one or two solvent sureties in the like amount;

- ii) The applicants/accused shall not pressurise the complainant or the witnesses in any manner whatsoever;
- iii) The applicants/accused shall not associate themselves with any religious organisation of such nature like Hindu Rashtra Sena;
- iv) The applicants/accused shall not indulge into criminal activity;
- v) The applicants/accused shall not enter the jurisdiction of Hadapsar city except for attending the concerned police station once in two weeks till 31st March, 2017 i.e., on every 1st and 15th day of every month from 6pm to 8pm.
- vi) The applicants/accused shall attend on all the Court dates.
- vii) In the event of breach of any of the conditions as mentioned above, the prosecution will be at liberty to move for cancellation of the bail.

1. Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)