

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL APPEAL NO.5 OF 2021

BANDU AMBADAS WANVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

Advocate for Appellants : Mr. Salunke Sudarshan J
APP for Respondents: Mr. K.S. Patil
Advocate for Respondent No.2 : Mr. S.A. Ambilwade (appointed) with
Mr. M.V. Thorat

CORAM: RAVINDRA V. GHUGE & B. U. DEBADWAR, JJ

Date: 30.1.2021

PER COURT :-

1 By this Appeal, the 19 appellants, out of 31 accused, seek anticipatory bail in the light of their request in Criminal Bail Application No.430/2020 having been turned down by the learned Special Judge, Majalgaon vide the impugned order dated 24.12.2020.

2 We have heard the learned Advocate for the appellants and the learned Advocate Shri Ambilwade (appointed through the High Court Legal Services Sub-committee, Aurangabad) with learned Advocate Shri M.V.Thorat on behalf of respondent No.2 and the learned Prosecutor on behalf of respondent No.1. With their assistance, we have gone through the appeal paper-book, the colour photostat copies of the photographs of injured victims and the medical papers.

3 Vide FIR dated 11.12.2020 lodged at 2.50 p.m, respondent No.2 - original complainant has alleged against the 31 accused that, they have indulged in the acts of violence and assault. The complainant, his victim father and other victim members of his family were indulging in agricultural activities in the alluvial land (portion of land which is the dried river bed). While such agricultural activities were being performed on 11.12.2020, the accused namely Babu @ Bhagwan Narayan Taur, Krushna Narayan Taur, Sonu @ Uttam Deshmukh, Munna Taur (said to be an unknown person, not residing in the said village), Bitu Vitthal Taur had entered into an altercation with the complainant and his father Sundarrao. An argument took place. After the argument ended, these accused returned to their houses and the complainant also went back to his house.

4 At about 11.30 a.m. the mother of the complainant Ranubai, who is wife of the victim Sundarrao, came running and informed the complainant that the persons belonging to Taur family assaulted Sundarrao. The complainant rushed with his uncle Sarjerao and after he reached the Godawari river that passes through the village, he found that Balu @ Bhagwan Taur was holding an axe, Krushna Taur had a stick, Sonu @ Uttam Deshmukh had an axe and Munna Taur and Bitthu Vitthal Taur were holding sticks. These persons were assaulting Sundarrao.

The appellants before us were standing with sticks and stones in their hands. Sundarrao was injured and had fallen unconscious. Since the complainant had reached, Krushna Taur (arrested) assaulted the complainant on his right hand with a stick. Uncle Sarjerao was attacked by Sonu Deshmukh (arrested) with an axe and he suffered a blow on his hand. Bhagwan Taur and Bittu Taur also attacked the complainant and his uncle with sticks and assaulted them by giving blows and they uttered the words "*Mangtyana Sodayche Naahi*". Thereafter, these persons followed the victims up to their residence and attacked them even inside their house. Injuries were inflicted on the brother of the complainant and the lady members of the family. Stones were pelted on the house of the complainant. A huge crowd of villagers gathered and have intervened to restrain the accused. 31 Persons have been mentioned as accused in the FIR.

5 Immediately there-after, Bhagwan Narayan Taur approached the Police station on 12.12.2020 at 4.29 p.m. and lodged a counter FIR, alleging that the complainant and seven of his family members had assaulted the members of the Taur family.

6 We have perused the order dated 24.12.2020 passed by the Trial Court granting bail to the eight main accused.

7 The learned advocates Mr. Ambilwade and Mr. Thorat have strenuously opposed this Appeal. They contend that the accused had arrived at the crime scene with full preparations. The earlier arguments had taken place at 7.30 a.m.. After returning back, they collected a large crowd and formed an unlawful assembly. They attacked the victims at 11.30 a.m. and they followed the victims up-to their residence and attacked even the lady members. Sections 307, 308 read with section 149 and other provisions of the IPC have been attracted. Similarly, various provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have also been attracted.

8 They further contend that the unlawful assembly had gathered courage of using axes and sticks and stones. Peace in the village was disturbed. The victims were cultivating on river bed away from the farms of the assailants and yet they were attacked only because they belong to the backward community. They had opposed the bail application before the Trial Court contending that the main accused are exerting pressure on the informant and the victims to withdraw the complaint.

9 The learned Prosecutor has opposed the Appeal with equal vehemence and has supported the contentions of respondent No.2.

10 In rebuttal Shri Salunke, learned advocate for the appellants submits that the alleged victims are the actually assailants. They are land grabbers. They do not have the valid permission under the MLR Code to cultivate alluvial land beyond one acre. As they have attacked some of the accused (in the first FIR) Bhagwan Taur had also lodged an FIR against many of the alleged victims who had attacked Bhagwan and his family members. The FIR clearly indicates that, not only physical injuries were inflicted on the various parts of the bodies, but also a gold chain costing about Rs.75,000/- and cash amount of Rs.3,000/- were snatched from the informant Bhagwan by Vishnu Awaghade, Dnyaneshwar Awaghade and Havya, son of Sarjerao Awaghade.

11 Having considered the submissions of the counsel for the respective sides and having gone through the record available, it appears that these appellants have not led the crowd and did not have axes for assaulting the complainants, the injured victims set out in the first FIR. Allegations against them are that they were blocking the path towards the river bed, were holding sticks and standing in their land. Vague allegations have been made against them, in so far as the attack on the residence of the informant is concerned. The prime accused were arrested on 17.12.2020 and were released on bail on 24.12.2020.

12 In view of the above, this Appeal is allowed and all the appellants, in the event of their arrest, shall be released on bail, on the following conditions:-

(A) All the appellants shall furnish a PR bond of Rs.25,000/- each and shall furnish a solvent surety of the like amount.

(B) Appellant Nos.1 to 5 shall mark their presence before the Majalgaon (Rural) Police Station on every Monday between 11 a.m. to 1 p.m. Similarly, appellant Nos.6 to 10 shall mark their presence before the Majalgaon (Rural) Police Station on every Tuesday between 11 a.m. to 1 p.m. Appellant Nos.11 to 15 shall mark their presence before the Majalgaon (Rural) Police Station on every Wednesday between 11 a.m. to 1 p.m., and appellant Nos.16 to 19 shall mark their presence on every Thursday between 11 a.m. to 1 p.m..

(C) Such presence shall be marked until the charge sheet is filed before the Trial Court. They would also make themselves available as and when required by the I.O..

(D) They shall cooperate in the investigation process.

(E) They shall not attempt to contact the complainant or any of the victims or any of their family members or such persons, who are likely to be witnesses in the Trial on behalf of the prosecution, in any manner, whatsoever, directly or indirectly.

(F) They shall not tamper with the prosecution evidence.

(G) They shall not enter the village of the informant Vishnu Aghade or his land where he is indulging in cultivation activities till filing of the charge sheet.

(H) They shall not directly or indirectly make any inducement or hold out any threat or advance any promise to any of the victims, informant or their relatives or even through any person acquainted with them or pressurize upon them to withdraw the case.

(I) None of these appellants shall travel beyond the limits of Beed district without a written application/information to the station house officer of the Majalgaon (rural) Police Station.

(J) The SHO of the Majalgaon (Rural) station shall record the attendance of these appellants in the station diary by obtaining their signatures.

13 Since Shri Ambilwade, learned advocate was appointed to represent respondent No.2, in view of respondent No.2 having failed in entering an appearance earlier. Having assisted the Court, we quantify his fees at Rs.5,000/-.

(B. U. DEBADWAR, J)

(RAVINDRA V. GHUGE, J)

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