

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2180 OF 2021

- | | | |
|--------------------------------|---|----------------|
| 1. Rajesh Dhakal Rao, |] | |
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| 2. Ramdas Kase Rao, |] | |
| |] | |
| |] | |
| (Presently detained in Central |] | |
| Prison, Thane.) |] | ... Applicants |

Versus

The State of Maharashtra,]	
(At the instance of Kasa Police Station.)]	... Respondent

...

Ms. Vrishali R. Raje for the applicants.

Mr. Satish Maneshinde, Special Public Prosecutor with Ms. S.S. Kaushik, A.P.P. for the State.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 09TH MARCH, 2022.

PRONOUNCED ON : 01ST APRIL, 2022.

ORDER.:-

1. The applicants before me came to be arraigned as accused in C.R. No.I-76 of 2020 registered with Kasa Police Station under Sections 302, 307, 120(B), 353, 332, 341, 342, 427, 109, 117, 143, 144, 145, 147, 148, 149, 152, 188, 201, 269, 270, 290, 505 (2) read with Section 34 of the Indian Penal Code read with Sections 51(b), 52, 54 of the Disaster Management Act, 2005 and Sections 2, 3, 4, 5 of the Epidemic Act, 1897 and Sections 135, 37(1)(3) of the Destruction of Public Property Act, 1984 and came to be arrested on 10/05/2020 and, since then, they are incarcerated.

On completion of investigation, charge-sheet is filed and they are charge-sheeted.

2. The applicants seek their release on bail on the ground that the prosecution has not been able to compile cogent and reliable evidence against them in the charge-sheet and as the case of the prosecution is to the effect that a mob of 400 to 500 villagers was present at the spot, on the date of the incident and the gathering violated the norms of lockdown and curfew hours and the mob lynched three persons and even attacked the police. It is submitted that the identification of the present applicants in the episode is doubtful.

The learned counsel Ms. Vrishali Raje submits that the charge-sheet is voluminous, running into 12000 pages and the investigation into the offence conducted by the local CID, is in no

way, sufficient to implicate the applicants for the offences with which they are charged. It is argued that without any sufficient evidence, about their active participation in the assault, which led to the death of the three persons, the applicants cannot be held guilty of any conspiracy. The foremost submission of Ms. Raje is to the effect that the prosecution has collected evidence in the form of CDR of all the arrested persons and shown the presence of the applicants at the place of incident. She states that in the vicinity of Gadchinche and other adjoining area, there is only one mobile tower and, therefore, it is natural to get the same location of any person within the range of 40 kms. Further, the panchanama and the statements of witnesses, who have seen the CCTV footages and identified several persons, who had gathered on the spot on the fateful day also is not sufficient evidence of their participation in the assault since only their presence has been mentioned. The statements of the eye-witnesses, which are compiled in the charge-sheet, also do not clearly indicate the applicants, is the submission.

3. As against the arguments advanced for the applicants, the learned Special Public Prosecutor, Mr. Satish Maneshinde would submit that the incident is a serious one when on 14/04/2020, while the lockdown was enforced in Palghar District, at around 10.00 p.m. – 10.30 p.m., a group of villagers has attacked a private vehicle. The FIR lodged at the instance of the Sub Inspector attached to Kasa Police Station has reported that a mob of around 400 to 500 villagers had assembled in Gadchinche, which

included large number of youngsters and the mob had overturned one white Eco vehicle and, three passengers were trapped inside. These three persons revealed their identity and informed that they were residents of Nashik and were proceeding for funeral of their Guru. However, they were intercepted by the villagers at Gadchinche, who had mistaken them as thieves. The mob had assaulted the occupants of the vehicle by use of wooden sticks, rods and stones and Mr. Maneshinde would submit that the mob turned violent and even started hurling stones at the police van and the incident took a serious turn and the police had to resort to fire in air to disperse the unruly crowd that had been trying to restrain cops from arresting and even attacked them. Mr. Maneshinde would submit that the investigation was initially conducted by Kasa Police Station, but later on, handed over to the State Crime Branch. With the assistance of several villagers, the persons were identified and arrested and, on completion of investigation, the charge-sheet has been filed against 126 arrested accused.

4. The learned Special Public Prosecutor would submit that considering the gravity of the offence, where three persons were done to death and this amounted to lynching by a mob, the prosecution has compiled the evidence in the charge-sheet in the form of CDRs as well as their identification of the accused in the CCTV footages and, accordingly, an affidavit is filed giving a tabular presentation of the prosecution evidence.

5. He would submit that the evidence against the present applicants is their identification by the witnesses in the CCTV footages and also the CCTV evidence, where the accused have identified themselves and a static photo taken out of the video clip, was forwarded to the Forensic Science Laboratory (FSL), which submitted its report, establishing the identity of the accused persons.

6. Based on the affidavit in reply, the role, which has been attributed to each of the applicant, can be discerned in the following manner :

<u>Applicant</u>	<u>Role attributed.</u>
Rajesh Dhakal Rao (A-1)	<ul style="list-style-type: none">• Had a weapon and/or participated in the assault.• Seen on the spot with torch in one hand and axe in the other.• Holding an axe and hitting the deceased.• Throwing stones at the deceased.• Hitting deceased seated inside the car.• Hitting policeman.• Repeatedly hitting Sadhu with stick, who had fallen on the ground.
Ramdas Kase Rao (A-2)	<ul style="list-style-type: none">• Had a weapon and/or participated in the assault.• Spotted on CCTV footage hitting the deceased with wooden log/stick and throwing stones at the car.

7. The role attributed to both the applicants is of active participation in the incident, where from the CCTV footage, it can

be discerned that applicant No.1 was holding an axe and hitting the deceased. It is also seen that he is pelting stones at the deceased. The CCTV footage further discloses that he assaulted the deceased while he was seated in the car till a point of time, when the deceased fell on the ground and still applicant No.1 kept on assaulting him. As far as applicant No.2 is concerned, the CCTV footage reveals that even this applicant had assaulted the deceased with wooden stick and pelted stones at them.

8. This positive evidence which is collated against the present applicants from the CCTV footage which was collected and, the witnesses were confronted to the said footage by drawing a panchnama and, since the applicants are specifically identified by the witnesses, their roles have clearly surfaced in the charge-sheet. The still photographs of the applicants, which were obtained from the CCTV footage, were forwarded to the FSL and it is reported that the actual photographs of the accused/applicants match with the photographs taken out from the CCTV footage. Both the applicants have played an active role and participated in the incident by pelting stones at the deceased. Applicant No.1 has brutally assaulted the deceased Kapavriksha Giri Maharaj with a stick and this specific role has come on record on the basis of the panchanama. Considering the gravity of the accusations faced by the applicants, their application is rejected.

[SMT. BHARATI DANGRE, J.]