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Cri.Bail Appln.No.1540/2020
CNR No.MHTH-01-003218-2020.

MHTH010032182020



Criminal Bail Application No. 1540/2020

(CNR No. MHTH01-003218-2020)

Arun Tulaji Kharpade & 10 others

V/s.

State of Maharashtra

(Through Kasa Pol.Stn.
in C.R.No.I-76/2020)

IN I N LEGAL N

ORDER BELOW EXH.1

[1] Applicant Nos. (1) Arun Tulaji Kharpade, (2) Prakash Ramu Chote, (4) Rustam Sadu Bhavar, (5) Krushna Manji Khanjode, (6) Jagdish Lahu Pawar, (7) Vinod Sonya Kharpade, (8) Nilesh Davaji Bhavar, (9) Sachin Ramesh Dandekar, (10) Lahanya Ramaji Bhavar, (11) Jayram Soma Pawar, (12) Godya Kalu Bhavar have filed this application for grant of bail U/Sec.439 of Code of Criminal Procedure in connection with C.R.No.I-76/2020 U/Secs. 302, 307, 120-B, 353, 332, 341, 342, 427, 109, 117, 143, 144, 145, 147, 148, 149, 152, 153, 188, 201, 269, 270, 271, 290, and 505(2) r.w. Sec.34 of the Indian

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Penal Code, U/Secs. 51(B), 52 and 54 of the Disaster Management Act, 2005, U/Secs. 2, 3, 4 and 5 of the Epidemic Disease Act, 1897, U/Sec.135 r.w. Sec.37(1)(3) of the Maharashtra Police Act and U/Secs. 3 & 5 of the Distraction of Public Property Act registered at Kasa Police Station, Palghar.

[2] Applicant Nos.(3) Ramdas Dhakal Kharpade, (13) Ramdas Gopal Bhurkud, (14) Mohan Dhavalya Gavit, and (15) Ramesh Devu Bhavar have withdrawn from the application. Hence, their names are deleted from this application.

[3] Prosecution case in short is as follows:-

On 16/04/2020 PSI Sudhir Katare alongwith other police persons had been on duty at Kasa Police Station. At about 22.00 hours API Anandrao Kale received phone call whereby he got information that there had been a big mob at Gadchinchale Chowkypada, near Forest checknaka and some persons out of the said mob have stopped one car and persons sitting therein. Immediately after receiving the said information the informant alongwith other police staff went to Gadchinchale by government vehicle at about 22.18 hours. At that time persons namely Vilas Dev Choudhary, Jagdish Lahu Bhavar, Vinesh Dharma Bhavar, Vijay Raghu Garud, Vishram Kashiram Sathe, Prakash Rishya Savar, Sanjay Nathal Savar, Ajay Jankya Borsa, Sunil Gangaram Borsa and other 400 to 500 people were

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gathered there. The informant asked them as to why they gathered there when lockdown was going on. The informant asked them to leave the spot immediately. At that time he saw one Eco Car bearing No.MH-02-BW-6729 was lying there in turtled position. Therefore, he went near the car to see as to whether anybody was there in the car. He found 3 persons in the said car. He took out them and enquired with them about their names. They disclosed their names as (1) Sushilgiri Maharaj, (2) Chikne Maharaj and (3) Nilesh Telgade who was the driver of the said car. They further disclosed that their Guru passed away at Nasik, hence, they were proceeding by the said road. However, the mob thought that those persons are not Sadhus, but they are thieves. The persons gathered in the mob were having sticks, iron rods, axes, and stones in their hands. The persons in the mob assaulted them by various weapons and attempted to kill them and then turned turtle their car. Therefore, the informant attempted to take those Sadhus in the government vehicle. At the same time 7 to 8 persons out of the said mob rushed towards the informant, caught hold collar of his uniform and beat him by sticks. The said persons also beat police head-constable by sticks. The mob was resisting police persons not to take those Sadhus in the police van. At that time, other police persons also gathered there and asked the people in the mob to leave the spot immediately. However, the people

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involved in the mob did not listen them and assaulted police persons also and attempted to kill said Sadhus and driver of their car. The informant lodged FIR about the incident. Accordingly, crime vide C.R.No.I-76/2020 came to be registered. The applicants came to be arrested. Now they are in judicial custody. Therefore, they have filed this application for grant of bail.

[4] Ld.Advocate for the applicants submitted that the applicants are innocent. They have not committed any offence as alleged by the prosecution. They were only gathered on the spot, out of curiosity to see what was going on. They have not played any role in commission of the offence. The I.O. has already seized the weapons used in the crime. Investigation of the crime is completed and chargesheet is filed. Therefore, nothing remained to be discovered or recovered from the applicants. Hence, their further custody is not required. They are permanent residents of Tal.Dahanu, Dist.Palghar having no criminal antecedent. They are ready to abide all the terms and conditions which will be imposed by the court. On these grounds he prayed for grant of bail.

[5] On the other hand Ld.Spl.P.P.Shri.Maneshinde submitted that though there is no specific role assigned to the applicants, they were present on the spot, at the time of the incident. Thus, there is prima facie evidence to show that the

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applicants were the members of the said unlawful assembly. Nature of the offence is serious. Hence, application may be rejected.

[6] No doubt, in this incident unfortunately 3 persons have lost their lives. Nature of the offence is serious. However, as settled position of law while considering bail application it is for the court to see as to whether there is material to show involvement of the accused in the crime. In the present application, total 15 applicants are seeking relief of bail. Out of them applicant Nos.(3) Ramdas Dhakal Kharpade, (13) Ramdas Gopal Bhurkud, (14) Mohan Dhavalya Gavit, and (15) Ramesh Devu Bhavar have withdrawn from the application. Hence, their names have been deleted from this application.

[7] So far remaining 11 applicants are concerned, on going through the material placed on the record, it appears that these applicants were only present on the spot at the time of the incident. No specific role has been assigned to these applicants in this crime by the prosecution. In the circumstances, even it is not clear as to whether these applicants were members of said unlawful assembly or they were gathered there out of curiosity to see what was going on. In the absence of such substantial material on the record, it would not be just and proper to keep

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the applicants behind bars. Moreover, investigation of the crime is completed and chargesheet is filed. Nothing remained to be discovered or recovered from the applicants. They are permanent residents of Taluka Dahanu, District Palghar having no criminal antecedent. There is no likelihood of taking this case for final disposal in near future. No purpose of the prosecution would be sufficed by keeping the applicants behind bars. It is well settled that accused should not be detained as pretrial conviction. Moreover, bail is rule and jail is exception. In the circumstances, presence of the applicants can be secured by imposing certain terms and condition.

[8] Having regard to the above mentioned facts and circumstances, I am of the opinion that the applicants are entitled to be released on bail. In the result, the application deserves to be allowed. I, therefore, pass the following order :

: ORDER :

1] Applicant Nos. (1) Arun Tulaji Kharpade, (2) Prakash Ramu Chote, (4) Rustam Sadu Bhavar, (5) Krushna Manji Khanjode, (6) Jagdish Lahu Pawar, (7) Vinod Sonya Kharpade, (8) Nilesh Davaji Bhavar, (9) Sachin Ramesh Dandekar, (10) Lahanya Ramaji Bhavar, (11) Jayram Soma Bhavar, and (12) Godya Kalu Bhavar be released on their executing P.R. Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) each with surety of like amount on condition that:-

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(a) they shall not tamper with the prosecution evidence and shall co-operate with the police machinery as and when required.

(b) the applicants shall not leave jurisdiction of India without prior permission of this court.

(c) at the time of furnishing bail, the applicants shall produce on record proper proof of their permanent residence.

3] The applicants shall furnish bail before the concerned court.

Thane.
Dt.:-16/01/2021

(S. B. Bahalkar)
Addl.Sessions Judge, Thane

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