

(1999) 04 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 487 of 1992

Vasudeo Karunakar Nambiar

APPELLANT

Vs

Mr. Balkrishna Karunakar Nambiar and others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2000) 5 BomCR 298

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : Subhash Jha, for the Appellant; S.R. Shinde, Assistant Public Prosecutor, S.V. Kotwal for S.R. Chitnis, for the Respondent

Judgement

Dr. Pratibha Upasani, J.—This criminal writ petition is filed, by the petitioner original complainant, being aggrieved by the order dated 31st March, 1992, passed by the III Additional Sessions Judge, Thane, granting bail to the accused respondent Nos. 1 to 7, in the sum of Rs. 5,000/- each, with a solvent surety in like amount with condition that they would not tamper with prosecution evidence.

2. Heard Mr. S.V. Kotwal for respondent Nos. 1 to 7 and Mr. S.R. Shinde, learned Addl. P.P. for the State. Non present for the petitioner. Perused the proceedings.

3. It appears that respondent Nos. 1 to 7 were charge sheeted for offences punishable under sections 302, 307 read with section 34 of the Indian Penal Code. They came to be arrested in Crime No. I-12/1992, in connection with murder of one Prakash and attempt to commit murder of Vasudeo Nambiar.

4. The prosecution case, as disclosed in the F.I.R. lodged by one Vinayak Yashwant Surve, showed that on 24th January, 1992, at about 4.30 p.m., Shashank Shambhu Nambiar, who was applicant No. 3 before the Sessions Court, was being beaten by 5 to 6 persons including deceased Prakash. Therefore, accused Damodar Karunakar Nambiar (respondent No. 7), Balkrishna Karunakar

Nambiar (respondent No. 1) and Rajesh Damodhar Nambiar (respondent No. 2) came there. As per prosecution story, they were armed with sticks. They began to beat Prakash and his other companions. These persons dragged Prakash and his companions towards the house of Vasu Nambiar. At that time, Vinayak Surve, Vasudeo Nambiar and Tukaram tried to separate the quarrel. During that incident, Vasudeo Nambiar and Prakash sustained stab wounds on different parts of their body. Due to the said stab wounds, Prakash later on died and Vasudeo (petitioner) was admitted in the hospital for treatment.

5. During the investigation, it was revealed that Rajesh (respondent No. 2) had stabbed Prakash which resulted into his death. On the report lodged by Shashank Shambhu Nambiar (respondent No. 3), Crime No. 1-11/1992 under sections 307, 147, 148, 149 of the Indian Penal Code came to be registered against 8 accused persons including present petitioner Vasudeo Nambiar, deceased Prakash and 3 others. Shashank had reported to the police that on 24th January, 1992, at about 4.30 p.m., he was present at his shop. At that time, Rajesh (respondent No. 2) came to his place and told him that Damodar (respondent No. 7) had called him at the shop. Therefore, Shashank left his house in a jeep to go to the shop. The road leading to his shop was passing from in front of the house of Vasudeo Nambiar, petitioner herein. When the jeep came on that turn, deceased Prakash stopped the jeep by signalling his hand. As soon as the jeep was stopped, Shashank was dragged out from the jeep by one Shambhu and some more persons who are accused in that case, and started beating him. At that time, Rajesh called Damodar Nambiar (respondent No. 7) and they tried to save Shashank. The accused persons dragged Shashank, Damodar and Rajesh towards the house of Vasudeo Nambiar, petitioner herein. During that period, Prakash whipped out a knife and stabbed on the abdomen of Damodar. Other accused persons continued to beat with sticks, iron bars etc. Prakash also stabbed Rajesh, according to the report of Shashank. Thus, Rajesh and Damodar both suffered serious stab wounds. The story of the present accused was that Prakash must have suffered stab wounds when he was actually stabbing Rajesh (respondent No. 2 herein) and others out of the present accused and thus Rajesh acted in self-defence. Narrating this incident, the accused persons prayed for bail.

6. The learned III Addl. Sessions Judge, Thane, observed that if both the F.I.Rs. were read together, it would be revealed that first of all, Shashank was assaulted by 5 or 6 persons including Prakash and Vasudeo Nambiar. At that time Damodar and Rajesh came there to separate the quarrel or to defend Shashank. During that period, two persons each from both the sides sustained stab wounds and eventually Prakash died. Thus, Vasudeo, who is petitioner in this petition, is the accused in the counter case. He is the brother of Balkrishna (respondent No. 1) and Damodar (respondent No. 7). Rajesh (respondent No. 3) is son of Damodar (respondent No. 7). It was admitted position that there was rivalry between Vasudeo Nambiar and Damodar Nambiar for political reasons. Both had contested Municipal elections shortly before this incident. This rivalry ended in further enmity between two groups. Police record shows that there was a long

history of crimes committed by Vasudeo Nambiar, present petitioner, while there is nothing to show that the accused, who were applicants in Criminal Bail Application No. 465 of 1992, had ever indulged in any crime prior to this incident. It appears that even the learned Police Prosecutor while opposing this bail application conceded that the accused persons in this case appeared to have exercised right of private defence, because the other party was aggressor and they were the first, who assaulted Shashank. It was also obvious that the main culprit Prakash died and except Vasudeo, remaining accused were granted bail by the Sessions Court, Thane.

7. Considering this situation, and considering the role played by all those who were involved in the incident, the learned Addl. Sessions Judge granted conditional bail to respondent Nos. 1 to 7. It was brought to his notice that Vasudeo, present petitioner, also had filed Criminal Bail Application No. 495 of 1992 on 23rd February, 1992 and the learned Chief Judicial Magistrate was pleased to grant bail to Vasudeo on 26th March, 1992. The learned III Addl. Sessions Judge observed that there was no justification to refuse bail, to respondent Nos. 1 to 7, particularly when all the accused persons including the mainculprit out of the aggressor party had been granted bail. This is how the impugned order came to be passed.

8. After going through the chronology of events, it is quite clear that the petitioner's request to take back the custody of respondent Nos. 1 to 7, who were granted bail by the learned III Additional Sessions Judge, Thane, after considering all the aspects, appears to be absurd and unreasonable. He himself has been released on bail, who was very much involved in the very same incident, but when others were granted bail, he became upset and wanted that they should be put behind bars. Moreover, though there is no interim order passed and though 9 years have passed, there is not a single complaint against the accused, respondent Nos. 1 to 7, to show that they have violated any of the conditions put by the III Additional Sessions Judge, Thane, while granting bail to them. Hence I see no reason to interfere with the order passed by the III Additional Sessions Judge, Thane. The application made by the petitioner deserves to be dismissed. Hence the following order :

Criminal Writ Petition No. 487 of 1992 is dismissed. Rule discharged.

9. Petition dismissed.