

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1295 OF 2015

Madhav @ Mahada s/o Dnyanba Pathade **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

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Mr. S.S.Rathi, Advocate for Applicant.

Mr. U.H.Bhogale, A.P.P. for Respondent – State.

Mr. R.N.Chavan h/f Mr. V.A.Bagadiya,
Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 1st APRIL, 2015

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PER COURT :

1. Heard Mr. S.S.Rathi, learned Counsel for the applicant, Mr. U.H.Bhogale, learned A.P.P. for the respondent – State and Mr. R.N.Chavan holding for Mr. V.A.Bagadiya, learned counsel for the first informant.

2. The First Information Report is recorded with police station Hingoli [Rural], district Hingoli vide Crime No. 43/2014 for the offences punishable u/s 302, 307, 147, 148, 149, 452, 323, 504, 506 of the Indian Penal Code and u/s 135

of the Bombay Police Act. The F.I.R. is lodged by Maruti Pathade on 24/07/2014. It is alleged that the present applicant along with other persons forcibly entered in the house of the first informant and tried to assault his mother Suman. At that time, Prakash, the brother of the first informant tried to intervene, he was assaulted by the present applicant and other co-accused by means of iron rod. In the said assault, Prakash lost his life.

3. The Investigating Officer has already completed investigation and charge sheet is filed in the Court of law.

4. Learned counsel for the applicant invited my attention to the various statements of the close relatives of the deceased by name Sopan, brother of the deceased and Baban, father of the deceased and supplementary statement of first informant Maruti shows striking similarity in the statement of these closely related witnesses. According to these prosecution witnesses, the applicant has assaulted by means of an axe. Further, the eye witnesses are not stating that the axe was used by the present applicant from blunt side. This can be seen from the supplementary statement of the first informant which was recorded on 26/04/2014. In the supplementary statement, first informant has changed the weapon in the hand of the present applicant from iron rod to the axe. In the said statement, first informant has stated that the present applicant has assaulted by means of axe to the deceased. In the same statement, first informant has stated that his father was assaulted by the present applicant by

means of axe from the blunt side, which clearly shows that first informant has differentiated the assault by means of an axe and assault from the blunt side of axe. Postmortem report shows that there are no injuries which can be attributed to the assault by means of axe. In that view of the matter, discretion can be exercised in favour of the present applicant, especially when charge sheet is already filed. Further, this Court has already released some of the co-accused by order dated 27/11/2014.

5. Hence, I pass the following order :

(i) The present Criminal Application is allowed.

(ii) The applicant be released on bail in connection with Crime No. 43/2014 for the offences punishable u/s 302, 307, 147, 148, 149, 452, 323, 504, 506 of the Indian Penal Code and u/s 135 of the Bombay Police Act registered with Police Station Hingoli [Rural], Dist. Hingoli on he executing P.R. Bond of Rs. 10,000/- [Rupees Ten Thousand] with one solvent surety of like amount. Bail before the trial Court.

(iii) The applicant shall not enter the territorial limit of village Chorjawala, Taluka and Dist. Hingoli for the period of two years or till the trial is concluded whichever is earlier without prior permission of the learned Sessions Judge.

(iv) With these observations, present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 1295.2015