

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1558 OF 2015

ANKUSH @ LALYA POPAT MALI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Desale Nilesh N.
APP for Respondent : Mrs.V.A.Shinde.
...

CORAM : **V. M. DESHPANDE, J.**
DATE : 09th April, 2015.

Per Court:

1 Heard Mr.N.N.Desale, learned counsel for the Applicant and Mrs.V.A.Shinde, learned Additional Public Prosecutor for the State.

2 The Applicant is arrested in connection with Crime No.231 of 2014, registered at Shirpur Police Station, District Dhule, for the offences punishable under Sections 302, 201, 143, 147, 148 and 149 read with Section 34 of the Indian Penal Code. By the present application, the Applicant is claiming to be released on bail.

3 The investigation is already over and charge-sheet is filed before the Court of law.

4 The charge-sheet was filed against five accused persons

and except the present Applicant, all other accused persons are released on bail by the learned Court below.

5 The deceased is the brother of first informant. The FIR is lodged on 27th October, 2014, in respect of the occurrence dated 25th October, 2014. Admittedly, the first informant is not an eye witness. According to the learned Additional Public Prosecutor, there are two eye witnesses in the prosecution case and they are Devidas More and Sayyad Ahmed Sayyad Guffran. With the assistance of both the learned counsel, I have perused their statements. The statements clearly show that the Applicant alongwith others gave hockey stick blow and cricket bat blow on the deceased. The role ascribed and attributed to the present Applicant is similar to one Sagar Bapu Buwa. The statement of Devidas also show that the accusations made against the present Applicant is like that which are made against said Sagar. Said Sagar is already released on regular bail by the learned trial Court. The learned trial Court, it appears, has not applied the principle of parity on the ground that there is a recovery at the instance of the present Applicant under Section 27 of the Evidence Act. I have gone through the discovery statement and the recovery Panchanama. It is clear that the hockey stick and cricket bat, which is recovered at the instance of the present Applicant is from the place which is

accessible to every one and the present Applicant was not having any exclusive possession. The recovery Panchanama clearly shows that the said bat and hockey stick was not having any blood stain.

6 In view of the fact that all other accused persons are released on bail, the Applicant is surely entitled to be released on the principle of parity, looking to nature of place from where sticks were recovered. Thus, the further continuance of the present Applicant in jail, in my view, will not subserve any purpose.

7 Hence, I pass the following order:

- I. Criminal Application No.1558 of 2015, is allowed.
- II. The Applicant – Ankush @ Lalya Popat Mali be released on bail on he executing P.R. Bond of Rs.10,000/- with two solvent sureties of the like amount.
- III. The Bail before the trial Court.
- IV. The Applicant shall attend the concerned Police Station twice a week till the charge is framed.
- V. The Applicant shall attend the concerned Police Station preferably on every Monday and

Wednesday in between 10:00 am and 2:00 pm.

- VI. Needless to mention that the observations made in the present order are *prima-facie* in nature and learned Judge who shall be conducting trial, shall not get himself influenced by the same.
- VII. With these observations, the criminal application is allowed.

[V. M. DESHPANDE, J.]

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