

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

Criminal Application No.7095 of 2014

Kamlakar s/o Vishwanath Hiwale. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. N.S. Ghanekar, Advocate, for applicant.

Smt. M.A. Deshpande, Additional Public Prosecutor, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 17th FEBRUARY 2015

ORDER:

1) The application is filed for grant of bail Both the sides are heard. Learned counsel for the applicant made statement that this is the first application filed for bail in this Court. He has produced copy of order made by other Hon'ble Judge in Criminal Application No.6679/2014 and he submitted that the co accused Dhondiram, similarly placed, got relief of bail and so present applicant is entitled to get bail. He argued on merits also.

2) Criminal Application No.4727/2014 of Rahul and Ravi, co-accused had come before this Court and by order dated 11-9-2014 this Court had rejected their application. Today also this Court rejected their second application on merits and even when the aforesaid ground of parity was argued.

3) While rejecting Criminal Application No.4727 of 2014 this Court has discussed the material available against all the accused. The material and the reasoning are as under :-

"2) Crime is registered on the basis of report given by Sampat Hiwale, brother of the deceased Daulat. Daulat had given some amount to one Gopinath Hiwale. As Gopinath was not returning the amount there was some dispute between Gopinath and Daulat. The incident in question took place on 19-5-2014. Initially after 3.00 p.m. there was quarrel between Gopinath and the deceased in the field. In the night time after two hours of 9.00 pm when deceased and his mother were sleeping in the court yard of his house, relatives of Gopinath, the present applicants came there with other persons. They all of sudden started assaulting Daulat by using sticks. The mother of Daulat tried to intervene to save

Daulat but she was also assaulted. After hearing hue and cry other persons like complainant rushed there. The complainant was told that present applicants and others had assaulted the deceased. He had seen the present applicants in the field also when the first incident had taken place in the field.

3) This Court has gone through the post mortem report. The PM report shows that as many as nine visible injuries were noted. There were many imprint injuries showing that no mercy was shown on the deceased. There were injuries like contusions and abrasions also. These external injuries had caused injuries to right lobe of liver and to spleen. The death took place due to intra abdominal organ trauma and haemorrhagic shock.

4) The learned counsel for the applicants submitted that there was no intention to commit murder. This submission cannot be accepted at this stage. The incident took place after 11.00 p.m. in front of the house of the deceased when there was only old mother to save him. They had gone there with the weapons and the deceased was attacked brutally by the applicants. In view of nature of injuries found on the dead body this Court holds that it is not possible to hold, at least at this stage, that there was no intention to commit murder. Further, there was also motive. In view of these circumstances, this Court holds that this is not a fit case to grant bail. The record also shows that

nobody dared to approach police immediately on that night and they had no courage to shift the deceased to the hospital due to the fear of the applicants. There is possibility of tampering with prosecution witnesses."

4) In view of the aforesaid circumstances this Court holds that the applicant is not entitled to relief of bail. In the result, the application is rejected.

Sd/-
(T.V. NALAWADE, J.)

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