

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 717 OF 2015
IN
CRIMINAL APPEAL NO. 635 OF 2015**

- | | |
|----------------------------------|--------------------------|
| 1. Salim Hayatchand Nadaf |] |
| Aged 25 years, Occ: Truck Owner |] |
| and Driver |] |
| |] |
| 2. Sameer Hayatchand Nadaf, |] |
| Aged 21 years, |] |
| Occ: Chicken Centre, Resident of |] |
| Azad Mohalla, Nadaf Lane, Ashta |] |
| Tal. Walawa, Dist. Sangli |] |
| (At present in Kolhapur Central |] |
| Jail) |].. Applicants / Accused |

Vs.

The State of Maharashtra	]
Through P.I. Ashta Police Station	]
District Sangli (CR No.75/2010)	].. Respondent

....

Mr. Vinod Sangvikar Advocate i/b Mr. Umesh R. Mankapure
Advocate for Applicant

Smt. V.R. Bhonsale A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J. &
SHRI.A.S.GADKARI, J.**

DATED : OCTOBER 14, 2015

P.C.:

1 Heard the learned counsel for the applicants-original

accused nos. 1 and 2 and the learned A.P.P. for the State.

2 The applicants have been convicted under Sections 302 and 307 read with Section 34 of IPC. The applicants are now seeking bail.

3 The learned counsel for the applicants stated that he is not pressing this application as far as applicant no.1 - Salim Nadaf is concerned and he is pressing this application only in relation to applicant no.2 - Sameer Nadaf. As far as applicant no.1 Salim Nadaf is concerned, he seeks liberty to file a fresh application at a later stage. Liberty as prayed for, is granted. Thus, this application is being considered only in relation to applicant no.2 - Sameer Nadaf.

4 It is the prosecution case that on 11.7.2010 at about 7.30 p.m. original accused no.1 - Salim Nadaf, applicant no.2 - Sameer Nadaf and their father Hayatchand assaulted Majid Shaikh and Soheb Shaikh (PW 6). Accused Salim Nadaf gave blow with 'Jambia' on the neck and stomach of Majid Shaikh. Accused - Salim Nadaf also gave blow with 'Jambia' on the

head of Soheb. At that time, applicant Sameer Nadaf and accused Hayatchand assaulted Soheb and Majid Shaikh with sticks. Majid Shaikh died on account of the said assault.

5 The learned counsel for the applicants submitted that it is the specific case of the prosecution that applicant - Sameer Nadaf assaulted deceased Majid Shaikh as well as PW 6 Soheb with sticks. He pointed out the evidence of PW 17 Dr. Kesarkhane who conducted the post-mortem on the dead body of Majid Shaikh and submitted that the medical evidence shows that Majid Shaikh had sustained five injuries, all of which were either stab or cut lacerated injuries. There were no injuries on the body of Majid Shaikh which could be said to be caused by sticks. Similarly, he pointed out the evidence of PW 12 Dr. Kabade who examined PW 6 Soheb immediately after the incident. Soheb was found to have sustained only one bleeding and cut injury which was on the head. According to Dr. Kabade, the injury was possible by sharp object. Thus, the learned counsel for the applicant stated that no injury was found on the deceased or the injured witness which was consistent with the assault by stick. He submitted that this

shows that the applicant - Sameer Nadaf did not assault deceased Majid Shaikh or the injured witness PW 6 Soheb Shaikh. Prima facie, we find some merit in this contention. Moreover, it is an admitted fact that the applicant - Sameer Nadaf was on bail during the trial and it is not the case of the prosecution that the applicant - Sameer Nadaf misused the grant of bail. In this view of the matter, we are inclined to grant bail to applicant no.2 - Sameer Nadaf, hence, the following order.

ORDER

- (i) The applicant no.2 - Sameer Hayatchand Nadaf to be released on bail in the sum of Rs.25,000/- (Rs. twenty five thousand only) with one surety in the like amount.
- (ii) During the period that applicant no.2 - Sameer Nadaf is on bail, he shall report to Ashta Police Station Sangli on first Monday of every month.
- (iii) Application is disposed of accordingly.

A.S.GADKARI, J.

ACTING CHIEF JUSTICE