

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 353 OF 2015**

Datta Vasant Jadhav	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ganesh K. Gole for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 18TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the respondent-State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-97 of 2013 registered with the Ambarnath Police Station, Thane, for the alleged offences punishable under Sections 147, 148, 149, 302, 34 of the Indian Penal Code.

3. The incident in question has taken place on the intervening night of 23rd and 24th May, 2013 at about 12:45 a.m. It is alleged by the

complainant that he and his friends about 7 to 8 had gone to attend the Haldi function and after attending the function, while returning back in an auto rickshaw, had a quarrel over the rickshaw fare with the auto rickshaw driver, Jaswant Singh Gupta. It is alleged that therefore, Jaswant Singh Gupta refused to ply the rickshaw, as a result of which, the complainant and his colleagues were compelled to walk, while the rickshaw driver proceeded towards Ambernath, hastily. It is alleged that 15-20 minutes thereafter, the said Jaswant Singh Gupta returned to the spot along with 6 to 8 persons in a rickshaw and on two motorcycles. They said persons were allegedly armed with hockey sticks and rods. All the said persons are stated to have assaulted the complainant and others. In the said incident, Bapu Malwalkar sustained a fatal injury, as a result of which, he died on the spot. Four to five other persons also received injuries in the said incident.

4. Learned Counsel for the applicant submitted that the applicant is in custody since 26th May, 2013. He submitted that some of the statements of the persons who were present at the spot, show that the accused was shown to the said persons in the police station. He submitted

that as far as recovery is concerned, the recovery of clothes is a joint recovery and the recovery of bamboo stick at his instance does not show that the bamboo stick had blood stains.

5. Learned A.P.P opposed the bail application. He submits that the present applicant has been identified in the test identification parade which was held on 28th June, 2013 by one Sagar Arjun Padale. He submitted that the said witness Sagar's statement was not recorded to show that the accused was shown by the police in the police station. He also submitted that there is a recovery of a bamboo stick at the instance of the applicant and that charge has been framed in the present case.

6. Perused the charge-sheet. *Prima facie*, there is material to show the complicity of the applicant. He has been identified in the identification parade by Sagar Padale and there is a recovery of a stick at his instance. Considering the aforesaid material and the fact that the charge has been framed, the application is rejected.

7. It is made clear, that the observations made herein are *prima facie*, and the learned Judge shall conduct the trial on its own merits, in accordance with law uninfluenced by the observations made herein by this Court.

REVATI MOHITE DERE, J.