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

CRIMINAL APPLICATION NO.1876 OF 2016

Himmat s/o Narayan Bhosle,
Age: 40 years, Occ: Agri.,
R/o. Bhamthana, Tq. Shrirampur,
District Ahmednagar. ..APPLICANT

VERSUS

The State of Maharashtra & anr ..RESPONDENTS

Mr N.S. Ghanekar, Advocate for applicant;
Mr S.J. Salgare, Addl. Public Prosecutor for
respondent No. 1
Mr R.B. Temak, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 1st August, 2016

ORDER :

The applicant is seeking regular bail in Crime No. 100 of 2015 registered with Virgaon Police Station, District Aurangabad, for the offence punishable under Sections 302, 504, 143, 147, 148, 149 of the Indian Penal Code.

2. One Narayan Bhosale filed Regular Civil Suit No. 208 of 1997 for specific performance and

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perpetual injunction in regard to land bearing Gat No. 192 at village Bajathan, Taluka Vaijapur, which came to be dismissed vide order dated 16th December, 2000. The applicant herein is the son of same Narayan.

3. The applicant claimed that an offence came to be registered against him pursuant to the complaint lodged by one Suresh Tribhuvan alleging that the above referred property was purchased by him and came to the share of his brother namely Ramesh Bhaskar Tribhuvan. While Ramesh was cultivating the land on 17th September, 2015, the applicant along with other co-accused formed an assembly, assaulted Ramesh, resulting into his death. As such, Crime No. 100 of 2015 for an offence punishable under Sections 302, 504, 143, 147, 148, 149 of the Indian Penal Code. The applicant came to be arrested on 21st September, 2015.

4. In the above referred background, while

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seeking regular bail, Mr. Ghanekar, learned Counsel for the applicant would urge that the applicant's involvement in the crime in question is improbable. He would rely upon the statement of eye witness Babasaheb Wayal, including that of contents in the first information report along with statement under Section 164 of the Code of Criminal Procedure so as to submit that the role attributed to the applicant is that of use of stick and not any other weapon. While trying to co-relate with the injuries suffered by Ramesh, particularly cause of death, according to him, death has been caused because of incised wounds and as such, the applicant is not in a position to cause incised wounds with the help of stick. He then took me through the statement of other eye witness Prakash Kale, tractor driver, so as to submit that the applicant is not involved in the crime in question. According to him, in test identification parade, the applicant was not identified by the complainant, who claimed to be an witness to the incident.

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5. While opposing for grant of bail, learned A.P.P. would submit that other co-accused Shrimant, who is released on bail, cannot be treated at par with that of applicant. Learned A.P.P. would then urge that it is not open for this Court to show indulgence to the contradictions and omissions in the statement of eye witness Babasaheb.

6. Having bestowed my thought to the submissions made, it is required to be noted from the investigation papers that father of present applicant holds a decree from the competent civil Court as against previous owner of land Gat No. 192, which was purchased by the wife of complainant Suresh, in 2014 from erstwhile owner, who has lost in the civil suit.

7. The statement of eye witness Babasaheb as is recorded on 18th September, 2015, supplementary statement on 7th December, 2015, result of test identification parade and statement recorded under Section 164 of the Code of Criminal Procedure does

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not specifically take this Court to only inference that the applicant is *prima facie* involved in the commission of crime in question by use of stick.

8. This Court, for the purpose of deciding this application, is relying upon the statement of witness Babasaheb recorded under Section 164 of the Code of Criminal Procedure.

9. It is then to be noted that the cause of death appears to be five incised wounds as is reflected in Column No. 17 of the post mortem report. It is admitted position that by use of stick, the applicant could not have caused any incised wound.

10. In view of above, in my opinion, there is improbability as regards *prima facie* involvement of the applicant in the crime in question. As such, the applicant is entitled to be released on bail. Hence, the following order:-

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The applicant be released on bail, in connection with Crime No. 100 of 2015 registered with Virgaon Police Station, District Aurangabad, for the offence punishable under Sections 302, 504, 143, 147, 148, 149 of the Indian Penal Code, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

11. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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