

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

CRIMINAL APPLICATION NO. 4470 OF 2016

1. Bharat s/o. Narayan Bhosle .. Applicants
Age. 40 years, Occ. Agri.,
R/o. Bhamthana, Tq. Shrirampur,
Dist. Ahmednagar.
2. Annasaheb s/o. Narayan Bhosle
Age. 55 years, Occ. Agri.,
R/o. Bhamthana, Tq. Shrirampur,
Dist. Ahmednagar.

Versus

The State of Maharashtra .. Respondent

Mr.N.S. Ghanekar, Advocate for the applicants.
Mr.S.P. Sonpawale, APP for respondent/State.

**CORAM : A.M. BADAR,J.
DATED : 06.10.2016**

P.C. :-

1. Applicants/accused in Crime No.I-100 of 2015 registered with Virgaon Police Station, Dist. Aurangabad, for the offences punishable under sections 302, 504, 143,

147, 148, 149 of the Indian Penal Code, by this application, are seeking their release on bail.

2. Heard learned Counsel appearing for applicants/accused. He argued that Babasaheb Wayal is the star witness for the prosecution. His first statement under section 161 of Cr.P.C. shows that he was knowing accused persons and he had attributed a specific role to almost all accused persons. In his supplementary statement also, this witness has ascribed role to most of accused persons, but has changed his version so far as sequence of events and weapons are concerned. Learned Counsel drew my attention to statement of Babasaheb Wayal recorded under section 164 of Cr.P.C. and contended that in similar fashion, Babasaheb Wayal has changed his version in the third statement also. It is further argued that another two eye witnesses though have stated the incident of murder, they were not knowing accused persons and no test-identification parade in respect of those two witnesses, namely, Prakash Kale and Raju Gaikwad was conducted. Learned Counsel further drew my attention to order dated 14.03.2016 passed in Criminal Application No.1315 of 2016 releasing co-accused Shrimant Bhosle as well another order dated 01.08.2016 in Criminal Application No.1876 of 2016 releasing another co-accused Himmat Bhosle on bail. Learned Counsel stated that role

of present applicants in the crime in question is lesser than these two co-accused, who are released on bail by this Court. Therefore, on principle of parity, present applicants are entitled for bail.

3. Learned A.P.P. opposed the application by contending that in his very first statement Babasaheb Wayal has specifically named accused persons including present applicants and acts of present applicants are also mentioned by this witness. Learned A.P.P. further argued that statement of Prakash Kale and Raju Gaikwad who have witnessed the incident also shows complicity of present applicants in the offence punishable under section 302 of the Indian Penal Code and therefore they are not entitled for bail. Learned A.P.P. submitted that there was strong motive with accused persons to eliminate Ramesh Bhaskar Chabukswar.

4. I have considered the submissions and also perused the charge-sheet. According to prosecution case, on account of dispute over possession of the agricultural field, accused persons including present applicants, by forming unlawful assembly with common object, assaulted Ramesh Bhaskar Chabukswar. He was killed on the spot in prosecution of common object of the said unlawful assembly of which applicants were members.

5. It is well settled that once membership of an unlawful assembly is established, it is not incumbent to establish whether any specific overtact has been done by any accused. Mere membership of the unlawful assembly is sufficient and every member of the unlawful assembly is vicariously liable for the acts done by others in prosecution of the common object of said unlawful assembly.

6. In the case in hand, according to the prosecution, all accused persons formed unlawful assembly with common object to commit murder of Ramesh Chabukswar. They then raided the field where Ramesh Chabukswar was doing sowing operations. At that time they all were armed with weapons including sticks, koyta and slingshot. Ramesh Chabukswar was then assaulted in presence of Babasaheb, Prakash and Ravi. Ramesh Chabukswar died on the spot itself.

7. In this context, it is apposite to note that co-accused Himmat Bhosle had applied for bail before this Court vide Criminal Application No.1876 of 2016. While deciding that application on 01.08.2016, in para No.3 of its order this Court has observed that accused persons formed an unlawful assembly and assaulted Ramesh

resulting into his death. In para No.4 it was observed that death of Ramesh was caused because of incised wound, whereas the applicant therein – Himmat Bhosle was stated to be holding the stick. Thereafter, this Court has held that the applicant therein, namely, Himmat Bhosle could not have caused any incised wound by stick. It is further observed that Himmat Bhosle had used stick in commission of crime in question. With this, he was released on bail.

8. Co-accused Shrimant Bhosle along with other accused had applied for bail by filing Criminal Application No.1315 of 2016. While deciding that application on 14.03.2016, this Court has observed that though presence of Shrimant was mentioned in his statement by eye-witness Babasaheb in statement under section 164 of Cr.P.C., his presence is not shown at the time of alleged incident. With this, even co-accused Shrimant Bhosle was released on bail.

9. Perusal of statement of Babasaheb under section 161 of Cr.P.C. recorded on 18.09.2015 shows that stick was attributed to applicant Annasaheb. The stick as well as slingshot was attributed to applicant No.1-Bharat Bhosale. In his supplementary statement, name of applicant No.1 – Bharat is not mentioned. Applicant No.2

is stated to be holding stick. There are some changes in weapons attributed to accused in the supplementary statement. In the statement under section 164 of Cr.P.C., witness Babasaheb Wayal has attributed stick to applicant No.2-Annasaheb. In this statement, applicant No.1-Bharat Bhosale is not mentioned.

10. Though in the statement under section 161 of Cr.P.C. as well as in supplementary statement, witness Babasaheb has named accused persons, with specific role, still in identification parade, he has not identified applicant No.2- Annasaheb Bhosle.

11. Other eye witnesses Prakash and Raju have not mentioned present applicants as assailants because they were not knowing names of assailants. No test identification parade was conducted by putting these two witnesses in the parade.

12. It is thus seen that though there was an unlawful assembly with common object, this Court by order dated 14.03.2016 and 01.08.2016 released two of co-accused having similar role and similar evidence on bail. Therefore, present applicants are also entitled for the same treatment. No positive statement was made before this Court as to whether the State had challenged those

two orders granting bail to co-accused. Hence, the following order :-

O R D E R

- i) The application is allowed.
- ii) Applicant No.1-Bharat s/o. Narayan Bhosle & applicant No.2. Annasaheb s/o. Narayan Bhosle, in Crime No.I-100 of 2015, registered with Virgaon Police Station, Dist. Aurangabad, for the offences punishable under sections 302, 504, 143, 147, 148, 149 of the Indian Penal Code, be released on bail on executing P.R.Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] and on furnishing surety in the like amount, by each of them.
- (iii)As a condition of this Order, applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(8)

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(iv) Applicants shall not tamper the evidence of the prosecution.

(v) Applicants shall co-operate the trial Court in the expeditious disposal of trial against them.

[A.M. BADAR, J.]