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

CRIMINAL APPLICATION NO.5737 OF 2016

Vilas s/o Lahu Lokhande,
Age: 60 years, Occ: Agri.,
R/o. Kolhar, Tq. Rahuri,
Dist. Ahmednagar. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Rahuri Police Station,
Tq. Rahuri, Dist. Ahmednagar. ..RESPONDENT

**WITH
CRIMINAL APPLICATION NO.5874 OF 2016
IN
CRIMINAL APPLICATION NO. 5737 OF 2016**

Mussa Maktum Shaikh,
Age: 27 years, Occ: Business,
R/o. Kalika Nagar, Shirdi,
Tq. Rahata, Dist. Ahmednagar. ..APPLICANT

VERSUS

1. Vilas s/o Lahu Lokhande,
Age: 60 years, Occ: Agri.,
R/o. Kolhar, Tq. Rahuri,
Dist. Ahmednagar.
2. The State of Maharashtra. ..RESPONDENTS

Mr Niteen V. Gaware, Advocate for applicant in
Criminal Application No. 5737 of 2016 and for
respondent No. 1 in Criminal Application No. 5874
of 2016;

Mr S.M. Ganachari, Addl. Public Prosecutor for
respondent/State;

Mr Rajendra K. Temkar, Advocate for

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complainant/applicant in Criminal Application No.
5874 of 2016

CORAM : A.S. CHANDURKAR, J.

DATE : 28th NOVEMBER, 2016

ORAL ORDER :

For the reasons stated in Criminal Application No. 5874 of 2016 seeking permission to assist the prosecution, same is allowed and disposed of.

2. The applicant in Criminal Application No. 5737 of 2016, who is accused No. 2 in Crime No. I-427 of 2015 registered with Rahuri Police Station, Taluka Rahuri, District Ahmednagar for the offences punishable under Sections 302, 307, 323, 143, 147, 148, 149, 427, 504 and 506 of the Indian Penal Code, having been arrested on 9th March, 2016 seeks his release on bail.

3. As per first information report dated 13th December, 2015, the informant along with his brother had been to Ghule brothers, as there was some dispute between accused – Dattatraya Shirsat

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No.1 and Ghule brothers. When the informant and his brother along with Ghule brothers reached at Kolhar Khurd, they saw the accused persons including the applicant. Thereafter Ghule brothers ran away. The brother of the informant was called by the accused. The accused No.1 assaulted him on his head with wooden rod and present applicant and another accused are stated to have assaulted him with stick on his body. The brother of informant expired on 15th December, 2015.

4. It is submitted by the learned Counsel for the applicant that the role attributed to the present applicant is of assaulting the deceased on his body by stick. Referring to the post mortem report, it was submitted that the cause of death was on account of blunt trauma to the head that was sufficient to cause death. He referred to injury nos. 4 to 8 to indicate that the said injuries were in the nature of contuse abrasions and same were not the cause of death. He submitted that the charge sheet as well as supplementary

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charge sheet have been duly filed with the Sessions Court. The stick in question is shown to have been seized on 16th March, 2016. It is, therefore, submitted that in this back ground, the applicant deserves to be released on bail and if necessary, by imposing conditions.

5. The application is opposed by the learned Additional Public Prosecutor by relying upon the first information report and the documents filed along with the charge sheet. He states that the statements of witnesses indicate the overt act committed by the applicant. The post mortem report indicates injuries suffered by the deceased. He submits that the applicant has criminal antecedents and if released, he is likely to pressurize the witnesses.

6. The learned Counsel for the informant also opposed the prayer for release of the applicant on the ground that prior to the applicant's arrest, threats were given to the informant and the report

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in that regard dated 10th January, 2016 was made by the informant with the police authorities. He submits that considering the role played by the applicant and the injuries sustained by the deceased, no case was made out to release on bail.

7. Perused the first information report as well as the charge sheet. The first information report as well as the statements of the witnesses indicate the assault by stick by the applicant on the body of the deceased. AS per Column No. 17 of the post mortem report, injury nos. 4 to 8 are contuse wounds, however, the cause of death is by blunt trauma on the head. Considering the fact that the supplementary charge sheet has been filed after arrest of the applicant, I do not find any further reason to keep the applicant behind the bars.

8. As regards likelihood of threats being given to the witnesses and aspect of antecedents, appropriate conditions can be imposed on the

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applicant to ensure that the witnesses are not threatened. The earlier offence registered pertains to the year 1993 and 2007. Considering the age of the applicant which is stated to be 60 years, I am inclined to allow the application subject to the conditions.

9. In view of aforesaid, the following order is passed :

: O R D E R :

(i) The applicant is directed to be released on bail, in connection with Crime No. I-427 of 2015 registered with Rahuri Police Station, Taluka Rahuri, District Ahmednagar for the offences punishable under Sections 302, 307, 323, 143, 147, 148, 149, 427, 504 and 506 of the Indian Penal Code, on his furnishing P.R. bond of Rs.20,000/- with one surety in the like amount.

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(ii) The applicant shall not enter the limits of Ahmednagar District till the completion of trial except for attending the Sessions Court on the dates when trial is scheduled.

(iii) The applicant shall inform the Investigating Officer as well as place on record before the Sessions Court his residential address where he proposes to reside till completion of trial.

(iv) The applicant shall not take any steps to coerce the prosecution witnesses.

(v) Breach of any of the aforesaid conditions would render his liberty being liable to be cancelled.

10. It is clarified that the observations made in this order are only for considering the present application.

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11. Criminal Application No. 5737 of 2016 is
allowed in above terms and disposed of.

(A.S. CHANDURKAR, J.)

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