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

CRIMINAL APPLICATION NO.5754 OF 2016

Mohammed Kaleem Mohammed Yakub
Ansari, Age: 42 years,
Occ: Service as Head Master,
R/o. Lane NO.2, Sawarkar Chowk,
Deopur, Dhule, Dist. Dhule. ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr M.B.W. Khan, Advocate for applicant;
Mr S.D. Ghayal, Add. Public Prosecutor for
respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 16th NOVEMBER, 2016

ORAL ORDER :

By present application, the applicant seeks his release on bail, as he has been arrested in Crime No. 68 of 2016 registered with Azad Nagar Police Station, Dhule, for offences punishable under Sections 302, 326, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. As per the first information report dated

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29th May, 2016, a marriage ceremony was going on at Garib Nawaz Nagar, Dhule. While lunch was being served there, there were some altercations between the complainant and guests, who came there. After the said altercations, there was a scuffle, resulting into injuries being caused to Abdul Alim-complainant and Sallauddin Muzawar. Further injuries were caused to Abdul Kayyum by stabbing him in his back. The injuries sustained by Abdul Kayyum caused his death. On that basis, report came to be lodged by Abdul Alim. In the said report, it is mentioned that after inquiring with local people, it was learnt that the applicant along with two others were responsible for the said attack.

3. Learned Counsel for the applicant submitted that though the statements of various witnesses have been recorded, name of present applicant, who is accused No.2, has not been mentioned, as having committed any overt act. Learned Counsel has referred to the statements of

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Abdul Naim, Rahimoddin Shaikh, Wasiyoddin Nuroddin and Sallauddin Muzawar, who was injured in this case. These witnesses have stated that assault by knife by four persons, while others gave blows by fists and kicks. It is then submitted that weapons in question have been seized at the instance of accused No. 1 and as per post mortem report, the cause of death is hemorrhage and shock due to stab injury to the left lung. It is further submitted that though the applicant was identified in test identification parade, same was conducted after about a month from the incident. It is submitted that as the charge sheet has now been filed and the investigation is complete, the applicant deserves to be enlarged on bail.

4. The application is opposed by learned Additional Public Prosecutor by relying upon the charge sheet presented to the Sessions Court. It is submitted that the applicant has been identified by witness Kalim Pinjari. It is further submitted that the report dated 29th May, 2016 indicates the

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nature of assault and considering the gravity of offence, the application deserves to be rejected.

5. Perused the charge sheet. At the stage of considering the prayer for release on bail, the material on record is required to be appreciated to enable the Court to take a prima facie of the matter, vis-a-vis the role of the present applicant. The report dated 29th May, 2016 indicates the injuries caused to two persons with a sharp weapon and further assault on victim Abdul Alim. The cause of death as mentioned in the post mortem report is on account of stab injuries. The weapon in question was seized on memorandum from accused No.1 under Section 27 of the Indian Evidence Act.

6. Considering the aspect of the injuries sustained by injured witness as well as victim being caused by sharp weapon that has been seized from accused No.1 and name of the applicant having been mentioned in the F.I.R. on the basis of

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statements made to the complainant, the applicant has made out a case for grant of bail. The persons who have identified the present applicant, on the basis of which, his name was mentioned in the F.I.R. have not been examined. Though the applicant has been identified in the test identification parade which would indicate his presence, however, that itself would not be sufficient to refuse the bail.

7. The applicant has been arrested on 30th May, 2016 and the charge sheet has been filed on 24th August, 2016. In that view of the matter, I find that the present applicant is entitled for grant of bail.

8. Accordingly, following order is passed :-

(i) The applicant be released on bail, in connection with his arrest in Crime No. 68 of 2016 registered with Azad Nagar Police Station, Dhule, District-Dhule, for the offences punishable under

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Sections 302, 307, 326, 323, 504, 506 read with Section 34 of the Indian Penal Code, on furnishing P.R. bond of Rs.25,000/- with two sureties in the like amount.

(ii) The applicant shall attend the Court of Additional Sessions Judge, Dhule on 10th of each month and as per directions of learned Additional Sessions Judge, Dhule.

(iii) The applicant shall not take any steps to tamper with the material collected by the prosecution.

(iv) Breach of any of the aforesaid conditions would result in liberty granted to him being liable to be cancelled.

The observations made in this order are only for the purpose of considering the prayer for grant of bail and the trial Court shall not be influenced by the same.

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9. Criminal Application is allowed on above terms and disposed of accordingly.

(A.S. CHANDURKAR, J.)

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