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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 477 OF 2016**

1. Tushar Ananta Gaikar	
2. Nitin Nago Shelke	...Applicants
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO.294 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 477 OF 2016**

Ranjana Krishna Patil	...Intervener
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IN THE MATTER BETWEEN

Tushar Ananta Gaikar and Anr.	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr.Rajiv Patil, Senior Counsel i/b Mr.T.R.Vispute, for the Applicants

Ms.Rutuja Ambekar, A.P.P for the Respondent-State

Mr.Manoj J. Bhatt, for the Intervener.

***CORAM : REVATI MOHITE DERE, J.
DATE : 29th JUNE, 2016***

P.C. :

1. Heard learned senior counsel for the applicants and the learned
A.P.P.

2. By this application, the applicants seek their enlargement on bail in connection with C.R. No. I-218 of 2015, registered with the Bhiwandi Taluka Police Station, Thane for the alleged offences punishable under Sections 302, 307, 326, 120B, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and under Section 4 and 25 of the Arms Act.

3. The complainant is Ranjana K. Patil, the wife of the deceased. The incident has taken place on 4th September, 2015 at about 11.30 a.m. She has alleged that when her son -Vishwas, his wife – Sunita and their son were going to Bhiwandi to a Doctor along with Bajrang Ananda Patil, in their car, they were obstructed by a tempo which was standing nearby. The said tempo belonged to one Anil Sadanand Patil. According to the complainant, Vishwas and Bajrang asked Anil to move his tempo, which was standing in the middle of the road, so that they could proceed. However, instead of moving the tempo aside, Anil started arguing with Vishwas, as a result of which there was an altercation between them. She has alleged that in order to avoid any further argument/altercation, Vishwas returned back home. According to the complainant, when Vishwas and Bajrang returned home, Ajay Patil, Vijay Patil, Lakhan Patil and Nitesh S.

Patil came to their house and started abusing and pushing Vishwas and Bajrang. She has further stated that her daughters-in-law mediated and resolved the fight. She has stated that all the accused went behind the complainant's house where the tempo was, made calls to some person; and that within some time, Ajay Patil came with his supporters Gurunath P. Mhatre, Tushar Ananta Gaikar (Applicant No.1), Anil Patil, Tulsiram Patil, Sadanand Patil and 4 to 5 other persons to the spot. The said persons are stated to be armed with choppers, swords, iron rods, wooden logs etc. She has further stated that when she was standing and watching all this, she saw her husband returning home on his motorcycle. She has stated that all the accused stopped him, and that Ajay Patil assaulted her husband with a chopper on his chest. She has further stated that on seeing the assault, she started shouting, pursuant to which, Vishwas, Bajrang, Vicky, Dilip, Manik, Manohar and Gajanan ran to the spot. She has stated that on seeing them, Gurunath Mhatre said 'मारा साल्यांना'; pursuant to which the accused persons started assaulting them. She has alleged that Vijay Patil assaulted Manik with a chopper on his stomach; that when Ajay Patil assaulted Manik with a chopper, Manohar came to save him, but Ajay Patil also assaulted him with a chopper; that Lakhan Patil also assaulted Manohar

with a wooden log; that Nilesh assaulted Dilip on his head with a scythe; that Gurunath Mhatre assaulted Bajrang with a sword; that Tushar Gaikar (Applicant No.1) assaulted with a sword; that Sadanand Patil was armed with a wooden log, Anil Patil with a chopper and Tulshiram Patil with a koyta; and that 4/5 others accompanying them were armed with a scythe and wooden logs. She has stated that all assaulted them. In the said incident, Krishna Patil, the husband of the complainant succumbed to the injuries and 4 persons viz., Bajrang, Dilip, Manik and Manohar were injured.

4. Learned Senior Counsel for the applicant submitted that admittedly, the applicants are not alleged to have assaulted the deceased with any weapons. He submitted that the applicant no.1 is not alleged to have specifically assaulted and injured any person. He submitted that Applicant No.1 is alleged to have assaulted Vishwas but as Vishwas moved away, he did not receive any injury. He submitted that as far as applicant no.2 is concerned, he is just named along with other accused and that there is no specific role attributed to them. He submitted that none of the witnesses have in their statements stated, on which part of the body, Manik

was assaulted by applicant no.2. He submitted that considering the hostile and inimical relations between the parties, several accused have been implicated in the said case.

5. Learned APP opposed the bail application. She submitted that all the accused persons had come to the spot armed with deadly weapons such as swords, choppers, iron rods, wooden logs etc. She submitted that the relations between the parties were strained, resulting in the incident. She submitted that as far as applicant no.1 is concerned, he has alleged to have assaulted Vishwas with a sword, however as Vishwas moved aside, he did not receive any injury at the hands of applicant no.1. Her only submission is that applicant no.1 was part of an unlawful assembly and was carrying a deadly weapon. As far as applicant no.2 is concerned, she submitted that the applicant no.2 had assaulted Manik with a wooden log along with other co-accused. She submitted that the injury certificate shows that Manik had sustained grievous injuries. She submitted that there is a recovery of a wooden log at the instance of applicant no.2. She submitted that as far as applicant no.1 is concerned, there is one C.R., being C.R.No.80 of 2010 registered against him, with the Bhiwandi Police

Station, and that the said C.R pertains to a dispute between the very two families.

6. Learned Counsel for the Intervener supported the learned APP. He has produced a compilation of documents, placing on record the C.R. lodged as against applicant no.1, being C.R.No.80 of 2010 and photographs showing the injuries sustained by Manik and others at the hands of Applicant No.2 and others.

7. Perused the papers. Applicant no.1 is alleged to have been armed with a sword. However, admittedly none of the injured have received any injury at the hands of Applicant No.1. According to the prosecution, applicant no.1 tried to assault Vishwas with a chopper and as Vishwas moved aside, he did not sustain any injury. There is no recovery of sword/any weapon/clothes at the instance of Applicant No.1. As far as applicant no.2 is concerned, the statement of Manik Patil (Injured) shows that he was assaulted by Sharad S. Patil and Sadanand with a scythe and by Pandiranth Mhatre, Ashok Mhatre and Nitin Nago Shelke (applicant no.2) with wooden logs. There is a recovery of a wooden log at the instance

of applicant no.2. The nature of injuries sustained by Manik are as follows :-

1. Stab Injury left iliac foss (of abdomen) with omentum
 2. IW(C) Elbow (posteriorly) and superior to elbow protruding out about 8 cms X 6 cm X muscle to bone deep. Triangular flap of skin raised.
 3. Incised wound (IW) ® thigh anteriorly, oblique, about 7 cm X 4 cm X muscle deep.
 4. IW (L) lumbar region, laterally in mid-axillary line, about 3 cm X 2 cm X muscle deep.
 5. IW scalp (occipital) about 7 cm long. Per abdomen-guarding present.
8. As far as applicant no.1 is concerned, although he is alleged to have been armed with a chopper, no one has received injuries. No doubt, in a case of an unlawful assembly, no specific overt act is required, and every member is equally responsible for the acts of others, but that is a matter which will be decided by the Trial Court. Suffice to state, that the applicant no.1 is not alleged to have caused any of the injuries sustained by the injured. Neither is there recovery of any weapon at his instance. The earlier case against the applicant no.1 is of 2010, is a case, arising out of an

incident, which took place between the very two families, 6 years prior. Considering the material on record qua Applicant No.1, he is entitled to be enlarged on bail. As far as applicant No.2 is concerned, he is alleged to have assaulted Manik with a wooden log along with others. Manik (injured) has in his statement attributed an overt act to applicant no.2. He has stated that Sharad and Sadanand assaulted him with a scythe and that Pandharinath, Ashok and Nitin Shelke (Applicant No.2) abused and assaulted him, his brother Dilip and Manohar with wooden logs. He has stated that all the accused left with Nitin (Applicant No.2) in his car. Manik's statement is consistent with the statement of other injured. The Injury Certificate of Manik is also consistent with his statement. There is recovery of a wooden log at the instance of Applicant No.2. Considering the material on record, the Applicant No.2 does not deserve to be enlarged on bail and accordingly his prayer for bail is rejected.

9. Accordingly, the application is partly allowed and the applicant no.1 is enlarged on bail on the following terms and conditions:-

ORDER

(i) The Applicant No.1 be enlarged on bail on furnishing P.R.

Bond in the sum of Rs.30,000/- with one or two local solvent sureties in the like amount;

(ii) The Applicant No.1 shall attend the Bhiwandi Taluka Police Station, Thane once a fortnight i.e on 1st and 3rd Saturday of every month between 10.00 a.m. to 12.00 noon, till the conclusion of the trial;

(iii) The applicant No.1 shall not enter the jurisdiction of Bhiwandi Taluka Police Station, Thane, for a period of six months from the date of his release, except for attending the Police Station, as per clause (ii)/Court on the date of hearing ;

(iv) The applicant No.1 shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant No.1 shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) The applicant No.1 shall attend the Sessions Court on every

date of the hearing and shall cooperate with the conduct of the trial;

(vii) An undertaking to the aforesaid clauses (ii) to (vi) shall be filed by the Applicant No.1, in the Trial Court, within two weeks after his release.

10. The Application is partly allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. In view of the disposal of the Bail Application No.477 of 2016, the Intervention Application being Criminal Application No.294 of 2016, does not survive and the same is also disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.