

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 886 OF 2016

Mr.Datta Mahadev Bhise	... Applicant.
Versus	
The State of Maharashtra	... Respondent.

Mr.Yug Choudhary i/b. Mr.Ajay Basutkar alongwith Ms.Neha Sonawane for Applicant.
Mr.Deepak Thakery, Asst. Public Prosecutor for Respondent-State.

CORAM : A.M. BADAR, J.

DATED : 5TH JULY, 2016.

P.C. :

1] Applicant Datta Mahadev Bhise/accused in Crime No.138 of 2015 with Police Station Marketyard, Pune for the offence punishable under Section 302, 307, 143, 147, 148, 149, 504 and 506 read with 34 of Indian Penal Code (IPC) by this application is praying for releasing him on bail.

2] Heard the learned Counsel appearing for the applicant, he argued that three eye witnesses including Karishma R. Nimbalkar (wife of deceased Rajendra), Shekhar Ramling Gaikwad, Akash Datta

Londe have not even named present applicant in their police statement. The learned Counsel further argued that even version of eye witnesses shows that fatal blow was given by Vijay Bhise and some minor role is ascribed to the present applicant.

3] The learned Counsel further argued that similar placed accused Santosh Rajendra Mohite is bailed out by the learned Additional Sessions Judge, Pune. As against this the learned Asst. Public Prosecutor opposed this bail application by contending that eye witnesses are naming the present applicant as one of the assailant by assigning a specific role to him.

4] Perused the Charge-sheet including statements of Arvind Nimbalkar and Sharan Nimbalkar. According to the prosecution case, accused persons including the present applicant had formed unlawful assembly on 11th November, 2015 and indulged in rioting with common object they committed murder of Rajendra Nimbalkar.

5] It is seen from the Charge-sheet that Ravindra, Arvind

and Sharan are brothers of deceased Rajendra Nimbalkar. It is the prosecution case that present applicant and co-accused Vijay were making attempt to extort money from members of Nimbalkar Family, who were working as Coolies at Vegetable Market at Pune. On 7th November, 2015 there was engagement ceremony of sister of the deceased. None from family of accused persons was invited for the ceremony. This infuriated accused persons. As seen from the Charge-sheet on 11th November, 2015 co-accused Vijay took Arvind to near by ground and assaulted him with a warning to behave properly. Frightened Arvind ran towards his house. Co-accused Vijay then chased Arvind and started beating him, as seen from the statement of witnesses Rajendra and Sharan being brothers of Arvind rushed to rescue Arvind. At that point of time co-accused rushed and assaulted Gaikwad brothers. According to the prosecution case in that assault, Rajendra succumbed to the injuries.

6] Postmortem Report shows ten anti-mortem injuries on dead body of Rajendra and cause of his death is shown as head injury.

7] Informant Arvind and injured witness Sharan are vividly describing the mode and manner of assault. The prosecution case is showing that accused persons have formed unlawful assembly with common object. As such at this stage major or minor role by any of the accused is not in consequence. Ultimately, everybody is equally liable for acts of each member of the unlawful assembly.

8] Consequences of omission in naming the applicant by other witnesses is subject matter of trial. Considering averments and prima-facie material in the Charge-sheet, view taken by the learned Additional Sessions Judge in releasing one of the co-accused cannot be endorsed by this Court.

9] No case for bail is made out, the application is rejected.

(A.M. BADAR, J.)