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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.851 OF 2016
WITH
CRIMINAL APPLICATION NO.368 OF 2016
IN
CRIMINAL BAIL APPLICATION NO.851 OF 2016

Maruti Bhanudas Kadam	 Applicant
V/s.	
The State of Maharashtra	 Respondent
and	
Pandurang Pradyumna Dhawale	... Intervener.

Mr. Ritesh Thobade, for the Applicant.
Mr. Arfan Sait, APP for the Respondent State.
Mr. V.V. Purwant, for the intervener.
Mr. K. N. Patil, Police Inspector, Tembhorni Police Station, District: Solapur.

CORAM : A. M. BADAR, J.

DATE : 12th JULY, 2016.

P.C. :

1. The applicant accused, in C.R.No.194 of 2014, registered with Tembhorni Police Station, District: Solapur, for the offences punishable under Sections 302, 307, 120(B), 143, 147, 148, 149 of the India nPenal Code, by this application, is seeking his release on bail.
2. The learned counsel for the applicant fairly submitted that

applicant approached this Court on earlier occasion and withdrew the said application as trial was expedited by this Court. He submitted that though the trial was directed to be concluded within a period of six months, despite passing of this order on 8th October, 2015, trial is yet to conclude. The learned counsel for the applicant further argued that the role attributed to the present applicant, who is 65 years of age is that of assault to Balaji by means of tommy. By pointing out injury certificate of Balaji, the learned counsel argued that Balaji has suffered only sharp cut wound which can be attributed to accused named Raosaheb @ Rau Dattu Kadam and hence applicant is entitled for bail.

3. The learned APP opposed the application by pointing that by forming unlawful assembly, applicant and co-accused committed murder of Sandip Kadam and attempted to commit murder of Balaji. The learned APP submitted that the applicant cannot be heard to say that chargesheet shows that he was holding tommy and assaulted Balaji and thereby not liable for any consequence of alleged murder of Sandip.

4. Perused the chargesheet. According to prosecution case, because of enmity accused persons formed unlawful assembly with an object of committing murder of Sandip Kadam and in the process Sandip was done to death. His associate Balaji was assaulted to cause serious wounds. The informant Pandurang Dhawale and victim of the crime in

question Balaji are eye witnesses to the incident. Their statements show that on two motorcycles they alongwith deceased Sandip and his brother Amol were proceeding towards Akumbe. On the way applicant and co-accused accosted Sandip and Balaji by giving dash of pick up van to their motorcycles. Both these witnesses in unison stated that 7 accused persons alighted from that pick up van. Five of them took charge of Sandip; whereas two of them including present applicant took charge of Balaji. It is averred that the applicant was holding tommy; whereas co-accused Raosaheb @ Rau Damu Kadam was holding sattur. Statements of both these witnesses show that Balaji was assaulted by both Maruti and Raosaheb. Co-accused, simultaneously assaulted Sandip by dangerous weapon like Sattur.

5. Sandip Kadam who happened to be Sarpanch of village Akumbe succumbed to injuries. The postmortem report shows that Sandip suffered 11 antemortem injuries and he died due to head injury with poly trauma. Apart from sharp cut injury Balaji suffered contusions as well as fractures of skull bone.

6. It is argued that statement of Balaji came to be recorded after about one month from the incident without there being any explanation for the delay. The fact of delay in recording statement has to be considered at the time of trial and that too after cross examination of Investigating

Officer as well as concerned witnesses. This is not the stage to look at this aspect of the matter. The ratio laid down in **Masalti -vs- State of Uttar Pradesh**, reported in **1965 AIR 202**, takes care of argument of learned counsel for applicant that only tommy was attributable to applicant and allegations are that he only assaulted injured Balaji. It is seen that applicant and co-accused came on the spot in a pick-up van. They were armed with dangerous weapons. Dash of van was given to the motorcycle driven by deceased Sandip and subsequently Sandip and Balaji were murderously assaulted by inmates of that pick up van. All this prima facie discloses common object of unlawful assembly of which present applicant was one of the member making him vicariously liable for the acts committed by each member of that assembly.

7. In the result no case for bail is made out. Application is rejected.

8. In view of disposal of present application, Criminal Application No.368 of 2016 filed by intervener is disposed of.

[A. M. BADAR, J.]