

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

**CRIMINAL APPLICATION NO. 1568 OF 2015
IN
CRIMINAL APPEAL NO. 1557 OF 2015**

Janardhan Baban Bhopi

..Applicant
(Org. Accused No.3)

v/s.

The State of Maharashtra

..Respondent

Mr. V.V. Purwant i/b. Mr. Devendra D. Pawar for the Applicant.
A.S.Shitole, APP for the Respondent-State.

**CORAM : SMT. V.K.TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : MARCH 14, 2016.**

P.C. (Per Anuja Prabjudessai, J.)

1. By this application, the applicant seeks suspension of sentence and enlargement on bail pending the decision of the appeal.
2. By judgment and order dated 7th December, 2015, the learned Addl. Sessions Judge, Kalyan had convicted the applicant and the other co-accused for offences punishable under Sections 143, 147,

323, 302 r/w. 149 of the Indian Penal Code and sentenced them to imprisonment for life.

3. Mr. Purwant, the learned Counsel for the applicant has submitted that applicant is in custody since 28.11.2011. He has submitted that PW1 and PW3 are interested witnesses and their evidence ought to have been scrutinized with care and caution. He has further submitted that the PW1 has alleged that the applicant herein had assaulted Harishchandra with knife whereas PW3 claims that the applicant had assaulted him with chopper. However, PW2 does not attribute any such role to the present applicant. The learned counsel for the applicant therefore submits that the evidence of the eye witness is inconsistent and could not have been relied upon. He has further submitted that the knife which was allegedly recovered pursuant to the disclosure statement, was recovered from an open place which was accessible to all and as such no reliance can be placed on the testimony of PW9 as well as recovery panchanama. The learned counsel for the applicant has urged that the evidence adduced by the prosecution does not connect the applicant with the

crime.

4. The learned APP has submitted that PW1 and PW2 are the injured witnesses, whereas PW3 had witnessed the incident. The testimony of PW1, PW2 and PW3 prima facie proves that the applicant herein was a member of the unlawful assembly and that he was armed with knife and was involved in inflicting injury on PW2. She has further submitted that the evidence on record clearly indicates that the applicant and the other co-accused being the members of the unlawful assembly were involved in committing murder of two persons, namely Devanand Mhaskar and Vishnu Meher. She has submitted that the offence is of serious nature. There is sufficient material to link the applicant with the crime and hence he is not entitled for bail.

5. We have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. The records reveal that the first informant-PW2 Ramchandra Meher, PW3 Jaywant Meher and the deceased Vishnu

Meher are brothers. There was a dispute between them and the accused over the property under Gut No.4 of Village Saigaon. The evidence of PW1 and PW2 who are the injured witnesses as well as the evidence of PW3 who is the eye witness reveals that on 27.11.2011 at 10.30 a.m. they along with Vishnu and Devanand had been to the said property. The applicant along with the co-accused came to the said property armed with spade, knife, chopper etc. There was an altercation between them and thereafter the co-accused Bhalchandra Bhopi gave blows of spade on the head of Devanand, while co-accused Balu Bhopi and Vishnu Bhopi assaulted Devanand with chopper. The co-accused Nitin Bhopi assaulted Vishnu Meher with chopper.

6. The evidence of PW1, PW2 and PW3 prima facie proves that Devanand had expired on the spot. The post mortem over the body of Devanand was conducted by PW13 Dr. Anjali Choudhary. The post-mortem report at Exh.73 reveals that there were stab wounds on the chest and back with corresponding internal injuries. There were three incise wounds below shoulder joint, above the elbow and on

left forearm. PW13 has opined that the death of Devanand was due to haemorrhagic shock due to injury to vital organs viz. heart and lungs.

7. The evidence on record further reveals that Vishnu was admitted to Dhanwantari Hospital at Badlapur and thereafter shifted to AIMS Hospital at Dombivali. He had expired while taking treatment. The post-mortem over the body of Vishnu was conducted by PW14 Leena Hande. The testimony of PW14 as well as the post-mortem at Exh.76 reveals that death of Vishnu was due to injury to vital organs (stomach, small and large intestine, omentum) caused by sharp edged pointed weapon. The evidence on record therefore reveals that the death of Devanand and Vishnu was homicidal.

8. The record reveals that all the accused had come to the field armed with weapons such as chopper, spade, knife etc and had assaulted Devanand and Vishnu. The evidence on record further reveals that the applicant was one of the members of the unlawful assembly and that he was armed with a weapon and was also

involved in inflicting injury on PW2. These facts are prima facie sufficient to attract the provisions of Section 149 of IPC which creates a constructive or vicarious liability on the member of the unlawful assembly committing an illegal act in prosecution of the common object of the other members of the assembly.

9. In the light of such evidence we are not inclined to suspend the substantive sentence of imprisonment and direct to enlarge the applicant on bail. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)

(SMT. V.K.TAHILRAMANI, J.)