

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

DISTRICT : JALGAON

8 CRIMINAL APPLICATION NO. 4419 OF 2017

MANGAL S/O BARKU MALI

VERSUS

THE STATE OF MAHARASHTRA

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Mr. V.B.Patil, Advocate for Applicant.

Mr. K.N.Lokhande, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 4th DECEMBER, 2017

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ORAL ORDER :

1. By this application filed u/s 439 of Cr.P.C., the applicant/original accused No. 2 is seeking release on bail in connection with the offences registered u/s 302,307,504,143,147,148 of the Indian Penal Code vide Crime No. 43/2017 at City police station, Chopda, Tq. Chopda, District Jalgaon.

2. Heard the learned counsel for the applicant

and A.P.P. for the respondent – State. Perused the charge sheet.

3. By referring the allegations made in F.I.R. and other evidence gathered by the prosecution during investigation, learned counsel strenuously contended that even if the entire case of the prosecution is accepted as true and correct, still it make out no offence to charge the applicant u/s 302 as well as 307 of I.P.C. It is pointed out that as per the prosecution case, on 30/03/2017, Subhash Barela [the deceased], Champalal Barela and Asaram Barela, who were habitually indulging into offences of theft, went to the agricultural field of Bhikan Mahajan to commit theft of electric wire providing electric supply to motor pump lying installed in the agricultural field. The deceased accused switched off the electric supply from transformer and cut the aluminium wire from pole. While they were leaving the field with aluminium wire, 4 to 5 persons came out of agricultural field. They chased the deceased and three persons accompanied with them who committed theft of electric wire. They succeeded to catch deceased Subhash Barela and informant Nana Barela. They were brought to field and there beaten them by means of stick and iron rod. It is

alleged that the deceased was assaulted by persons wearing red colour shirt. Other accused persons assaulted the informant. The informant as well as deceased who were injured were taken to police station by some of the accused. Subhash [deceased] succumbed to injuries sustained during the course of incident of beating the thieves caught by accused persons. On the basis of complaint lodged by Nana, who accompanied with the deceased and involved in the act of committing theft of aluminium wire, the said offences came to be registered against the applicant and three others.

4. By referring the over-all evidence, learned counsel submits that by no stretch of imagination it can not be said that assault was made with an intention to kill the deceased or to commit their murder. It is contended that in the facts and circumstances of the case, at the most it can be inferred that the intention of the applicant was to caught the persons habitually indulged into commission of theft in their agricultural field and to beat them. He submits that the investigation is already over. Charge sheet has been filed. The applicant is lying in jail since 31/03/2017. It is further contended that the applicant is an agriculturist by profession and he has no

track record of indulging into criminal activities.

5. On the other hand, learned A.P.P. opposed the application with the contention that there are eye witnesses to the incident who had seen the applicant and co-accused assaulting the deceased and the informant. By referring the postmortem report, it is pointed out that number of injuries were noticed on the body of the deceased, which reflects that the applicant had sufficient knowledge that by doing such act, the death of deceased may likely to result.

6. On due consideration of the submissions advanced in the light of over-all facts of the prosecution case and evidence relied to establish the complicity of the applicant in commission of the offence, I am of the view that the case is made out to enlarge the applicant on bail. It is not desirable to make any detail observations as to over-all case of the prosecution against the applicant. However, it can safely stated that the applicant and co-accused who assaulted the deceased and informant had not acted with premeditation to commit murder of deceased. In the F.I.R. itself, the informant has

mentioned that he himself, deceased and two other persons accompanied with them not doing any work. They were enjoying the life by money earned by committing theft. On the day of incident also the deceased, informant and two other persons went to the agricultural field with intention to commit theft of aluminium wire from the electric pole. After switching off the supply from the transformer, two of the accused which includes the deceased climbed up to the electric pole and cut the electric wire. While they were proceeding with theft articles, they were chased by 4 to 5 persons who came from agricultural field. Out of them, two persons succeed in escaping from the place. The deceased and the informant were caught by those people. They assaulted them by means of sticks and iron rod. Perusal of postmortem report reveals that though large number of injuries were received by the deceased, but most of them were in the nature of abrasions. The death was caused due to injury sustained over the head of deceased. Thus, in the facts and circumstances of the case, it can safely inferred that the intention of the applicant and co-accused was just to assault the deceased and informant and not to kill them. The investigation of the case is completed. There is no track record of the applicant of previous

involvement into offence of similar in nature. The applicant is agriculturist by profession. In this view that there is no likelihood that in the event of release of the applicant on bail, he may abscond to avoid the trial or pressurize the prosecution witnesses. I am, therefore, inclined to allow the application and pass the following order.

7. It is clarified that the observations as made above are made for limited purpose of deciding the present application. None of the observation made above be treated as expression of view of this Court as to overall merit of case of prosecution against the applicant.

ORDER

1. The application is allowed.
2. The applicant Mangal s/o Barku Mali lying arrested in Crime No. 43/2017 registered at City police station, Chopda, Tq. Chopda, District Jalgaon for the offences punishable u/s 302,307,504,143,147,148 of the Indian Penal Code be released on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- [Rupees Twenty

Thousand] with one surety in like amount on following conditions.

[i] The applicant shall not tamper the prosecution witnesses.

[ii] The applicant shall appear and record his appearance before the Officer in-charge of City police station, Chopda, Tq. Chopda, District Jalgaon on last day of each month between 10.00 a.m. to 11.00 a.m. till conclusion of trial.

[iii] The applicant shall not indulge in to offences of similar in nature.

[iv] The applicant shall furnish the names and address of his three close relatives with their phone numbers.

3. In the event of breach of any of the condition of bail, the bail granted to the applicant liable to be cancelled.

4. Bail to be furnished before the trial Court.

5. The application is disposed of in above terms.

[V.L.ACHLIYA, J.]

KNP/Cr. Apln. 4419.2017