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

CRIMINAL BAIL APPLICATION NO.1134 OF 2017

Dashrath @Pintu Baban Shelar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Hrishikesh Mundargi, i/b Mr.Subir Sarkar, for the Applicant.

Ms.Anamika Malhotra, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JULY, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.131 of 2016 registered with the Sangli City Police Station, for the alleged offences punishable under Sections 302, 307, 326, 323, 109 r/w 34 of the Indian Penal Code.
3. Learned Counsel for the applicant submitted that the allegations as against the applicant are false and baseless. He submits that

motive has been attributed to the original accused no.1 – Gorakhnath Maruti Kadam, who has been enlarged on bail, by this Court (Coram:Smt.Sadhana S. Jadhav, J.), vide order dated 16th December, 2016 passed in Criminal Bail Application No.2398 of 2016. He further submitted that there are two eye-witnesses to the incident dated 12th - 13th June, 2016. He submitted that the first eye-witness – Prakash Patil's statement, recorded on 15th June, 2016 shows that two persons assaulted Pandurang Kadam (deceased), in the intervening night between 12th - 13th June, 2016, however, no identification parade was held, so as to enable the witness to identify the said persons. According to the learned counsel, the second eye-witness i.e. Uday Kulkarni's statement was recorded on 4th July, 2016 i.e. after almost 20 to 21 days of the incident. He submitted that although, the applicant and co-accused – Sanjay Kamble have been named by the said witness, the veracity of his statement is doubtful, inasmuch as, the same was recorded belatedly. He submitted that although, the alleged eye-witness-Uday Kulkarni, has stated that he had not disclosed about the incident of assault earlier, because he was afraid of the accused, the same is belied by the fact, that the applicant was arrested on 13th June, 2016 itself. He submitted that although, it is alleged that two persons assaulted the

deceased with two sticks, there is recovery of three sticks. He further submitted that the applicant has no antecedents.

4. Learned APP opposed the application. She submits that there are two eye-witnesses to the aforesaid incident i.e. Prakash Patil and Uday Kulkarni. She further submits that there is a recovery of stick at the instance of the applicant. She submitted that the applicant also had motive to assault the deceased inasmuch as, the deceased was required to pass from the applicant's land. She relied on the statement of Dnyanoba Nimbalkar, in support of her submission.

5. Perused the papers. The complainant – Mohan Kadam is the son of deceased – Pandurang Kadam. It appears that there was a dispute between co-accused-Gorakhnath Maruti Kadam and the deceased over some ancestral piece of land. It appears, that the incident took place in the intervening night, between 12th and 13th June, 2016. It also appears that prior to the incident of assault, the deceased and the accused had alcohol together, after which there was an altercation between Gorakhnath and the deceased. Prakash Patil, who is an eye-witness to the incident has not

disclosed the names of the two persons, who are alleged to have assaulted the deceased. Admittedly, no identification parade has been held. Although, the second eye-witness – Uday Kulkarni, has stated that the applicant and the co-accused – Sanjay Kamble, assaulted the deceased with sticks, his statement was recorded on 4th July, 2016 i.e. after 20 to 21 days of the incident. It also appears, that although Uday Kulkarni, has stated he was afraid to disclose the said incident earlier, the fact remains that the applicant was arrested on 13th June, 2016 itself. There is also a statement of the applicant's employer – Shahaji Patil, who has stated that when he heard of the incident, he went to the spot and asked the people as to what had happened. He has stated that Prakash (eye-witness) and others disclosed that the deceased was assaulted by two persons by sticks. It appears that no names were disclosed by anyone. It also appears that although there is recovery of three sticks, only two sticks are alleged to have been used. *Prima facie*, the dispute was between Gorakhnath and deceased – Pandurang. The applicant has no antecedents. Investigation is complete and charge- sheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant 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 trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two week's after his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

7. The Application is allowed and disposed of in above terms.

8. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

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

(REVATI MOHITE DERE, J.)