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

CRIMINAL BAIL APPLICATION NO. 437 OF 2019

1. Sandip Chandrakant PawarApplicants
2. Rahul Chandrakant Pawar

V/s.

The State of MaharashtraRespondent

Mr. Raviraj R. Paramane for the applicants
Mr. N. B. Patil APP for the State
Mr. Deepak Girme, API, Panchvati Police Station, Nashik City.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 7, 2019.

P.C.

Applicants are seeking regular bail in Crime No. I-226/2018 registered with Panchvati Police Station, Nashik for offence punishable under Sections 302, 307, 324, 452, 143, 147, 148, 149, 120(B) of the Indian Penal Code, Section 4/25 of the Indian Arms Act and Section 135 of the Bombay Police Act. Both applicants were arrested on 09/07/2018 and were subjected to custodial interrogation. Charge-sheet is already filed.

2 Sunil, real brother of deceased Anil and friend of other victim Sagar Mane in a complaint dated 13/06/2018 alleged that out of old enmity, present applicants alongwith other co-accused assaulted Anil and Sagar resulting into death of Anil whereas Sagar got injured.

3 The fact remains, there are two eye witnesses to the incident in question.

4 In the aforesaid background, the learned counsel for the applicants submits that applicants are entitled to be released on bail for the reason that the only role attributed against them is use of stick in the commission of crime. It is further claimed that nothing incriminating viz. sticks or blood stained clothes are recovered from the applicants. It is the case of the applicants that they are falsely implicated.

5 The learned APP submits that all the accused persons were

armed with deadly weapons such as chopper, sticks assaulted Anil. It is claimed that Suraj, co-accused gave multiple stab injuries, Jayram assaulted deceased on his head with iron rod and applicants with help of sticks. He would then submit that the cause of death is cumulative effect of head injuries and multiple stab injuries. It is further brought to my notice that there is one antecedent being C.R. No. I-580/2016 punishable under sections 324, 323, 504 r/w 34 of the Indian Penal Code. As such, rejection is sought.

6 Considered rival submissions.

7 Upon careful reading of the complaint against the applicants who are real brothers, it can be inferred that the active role attributed to the applicants in the crime in question is that of use of sticks while assaulting deceased Anil. So far as other victim Sagar Mane is concerned, there is no role attributed to the applicants and that being so, applicants are required to deal with a case punishable under section 302, 149 of the Indian Penal Code.

8 The cause of death as could be inferred from the post mortem report is as under:

“Death is due to combined effect of craniocerebral damage due to blunt and sharp force injuries to head and haemorrhage shock due to multiple stab injuries to chest which are sufficient to cause death in ordinary course of nature individually and collectively”.

9 As such, the cause of death in the offence in question could be attributed to such accused who have caused blunt and sharp injuries to head and multiple stab injuries to chest.

10 Neither eye witnesses nor complainant alleges against the applicants of causing any head injuries or multiple stab injuries. Apart from above, the fact remains that nothing incriminating was seized from the applicants viz. neither sticks or blood stained clothes. As such, case of the applicants can be segregated from the case of other accused persons who are named in the F.I.R.

11 Though the learned APP has placed reliance on antecedents,

since offence registered therein is bailable, same will not have any impact over the plea for consideration of grant of bail in this crime.

12 As such, in my opinion, case for grant of bail is made out.

Hence, following order:

(A) Applicants be released on bail in Crime No. I-226/2018 registered with Panchwati Police Station, Nashik on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount.

(B) Applicants shall not influence witnesses or tamper with evidence.

(C) If applicants found in similar type of offence, prosecution will be at liberty to move for cancellation of bail.

13 Application stands disposed of.

[NITIN W. SAMBRE, J.]