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

BAIL APPLICATION NO.474 OF 2019

Prakash Girju Mhetar

.. Applicant

Versus

State of Maharashtra

.. Respondent

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Mr.Umesh H. Pawar, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for Respondent - State.

Mr.A.D. Sulgaonkar, Police Naik, Gaganbavada Police Station,
District-Kolhapur, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 18, 2019.

P.C. :

The Applicant is seeking bail in connection with C.R.No.12 of 2018 registered with Gaganbavda Police Station, District - Kolhapur, for the offences punishable under Sections 302, 307, 326 and 324 read with 34 of Indian Penal Code ("IPC", for short).

2 The case of the prosecution is that on 19th February, 2019, there was a quarrel between complainant and the accused ,which was pacified by the villagers. On 23rd February, 2018, the father and uncle

of the complainant went to the house of the Applicant. During the discussion, the Applicant and his son went inside and came with weapons. The Applicant was armed with sword whereas his son Aakash was having knife in his possession. While they were on the verge of assaulting the uncle of the complainant, his father intervened. At that time, the Applicant pushed father of the complainant, who fell down. The maternal uncle of the complainant Sakharam Gaonkar came forward to questioned the accused as to why they pushed the father of complainant. At that time, the applicant caught hold by Sakharam Gaonkar by left hand and the other accused Aakash gave a blow by knife on the chest of Sakaharm Gaonkar. He fell down as a result of blow. The complainant's cousin came forward to protect Sakharam. At that time, Aakash gave a blow by knife on back of Sachin Khedekar. At the same time, Vikas Varekar caught hold of the complainant and the Applicant gave a blow by sword on his head. The uncle of the complainant Laxman Khandagale tried to interven. He was assaulted by Applicant by giving blow of sword which was saved by him by putting his hand forward. He sustained serious injuries. After hearing the shouts of the injured, the people from the area came forward and they were taken to the hospital. Sakharam Gaonkar died on account of the injuries sustained by him.

3 Learned Counsel for the Applicant submitted that the Applicant cannot be attributed with intention of causing murder of Sakharam Gaonkar. The opponents were armed with sticks and they were aggressive. Cross case has been filed against them vide C.R.No.13 of 2018 for the offences punishable under Sections 143, 144, 323, 504 and 506 of IPC. It is further submitted that incident had occurred at the spur of the moment. The statements of witnesses recorded during investigation would indicate that the complainant's side was armed with stick and they started assaulting and in this situation the applicant and his son came armed with weapons and thereafter the incident of assault had taken place. It is submitted that there was no enmity between the applicant with the deceased. It cannot be said that there was no common intention to kill him. It is further submitted that the injuries sustained by the witnesses to whom the Applicant had allegedly assaulted, do not match with the weapon and role assigned to him. It is further submitted that the witness Pradeep Khedekar had sustained simple injury. The cross case has been investigated in which the complainant and other persons were impleaded as accused.

4 Learned APP submitted that the Applicant was armed with sword. Specific role has been attributed to him. He assisted the co-accused in stabbing the deceased. The Applicant has also assisted other persons. The deceased and the other injured persons had sustained injuries . It is therefore, submitted that bail should not be granted to the Applicant.

5 FIR mentions that the complainant and other had visited the house of the accused to resolve the earlier dispute. The complainant has stated that Applicant and other accused started assaulting the complainant and other persons. The Applicant was armed with sword and he caught hold of the deceased by his left hand and at the same time, the co-accused armed with knife, had given a blow on the chest of Sakharam Gaonkar. The contention of the learned Counsel for the Applicant that the Applicant had no intention to commit murder of the deceased, cannot be appreciated at this stage. There was incident of assault. The Applicant had also assaulted other persons. The submissions with regards to the nature of injuries advanced by the learned Counsel are to be considered at the stage of trial. It is pertinent to note that the co-accused was armed with knife has and gave a blow on the deceased. He was assisted by the Applicant. In the cross case, the offences was registered under

Section 324 of IPC and other allied offences. Considering the nature of evidence, and the role attributed to the Applicant, no case is made out for bail and hence Bail Application is rejected.

(PRAKASH D. NAIK, J.)