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

BAIL APPLICATION NO.1588 OF 2019

Nana @ Hauserao Devkate

.. Applicant

Versus

State of Maharashtra

.. Respondent

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Mr.Rahul K. Dhaygude, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for Respondent - State.

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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.309 of 2018, registered with Baramati City Police Station, Pune for the offences punishable under Sections 302, 143, 147, 148 and 149 of Indian Penal Code ("IPC", for short).

2 It is alleged that on 29th June, 2018 at about 11:30 p.m., the son of informant left the house and went in the village. On 29th June, 2018 at about 00:30 hrs. informant heard noise of quarrel and went to the Savtamali Square. He found that his son Akshay was pulled down by the Applicant and the other accused assaulted him by

wooden rod, iron pipe, stick, fist and kick blows. Informant intervened in the quarrel and tried to pacify the accused. However, he was assaulted by the accused. The injured had sustained injuries which resulted in his death. The First Information Report ("IPC", for short) was lodged by father of the deceased on 29th June, 2018. Statements of witnesses were recorded. Applicant and the other accused were arrested. On completing investigation, charge-sheet was filed.

3 Learned Advocate for the Applicant submitted that on account of assault by the deceased, the Applicant had registered an FIR against him. Hence, the Applicant has been falsely implicated in this case. Learned counsel drew my attention to the statement of the complainant, supplementary statement of the complainant and the statements of other witnesses and submitted that there is variation in the statement. The first informant had attributed the role of having pulled down the deceased to the Applicant. Subsequently, the informant has alleged that the Applicant was armed with wooden stick. It is also submitted that the co-accused were attributed the role of assaulting by fist and kick blows and who also alleged to have assaulted by stick by some of the witnesses granted bail by this Court as well as by the Sessions Court. There are no criminal

antecedents against the Applicant. He is in custody since September 2018.

4 Learned APP submitted that the case of the Applicant can be distinguished from the other accused. Applicant is the main person. The motive for assault is enmity. The Applicant was assaulted by the deceased in the past. The alleged incident had occurred due to enmity between the Applicant and the deceased. Specific role has been attributed to the Applicant. The case of the co-accused who have been granted bail can be distinguished. Some of the witnesses have categorically stated that the Applicant was armed with wooden stick and have assaulted the deceased and the Application may be rejected.

5 I have perused the charge-sheet. In the FIR lodged by the father of deceased on 29th June, 2018, it is stated that the Applicant had pulled down the deceased. Avinash @ Pappu Devkate were armed with wooden log, Dattu Gophane were holding iron pipe, Satyawar Gophane had assaulted deceased by iron pipe, Aaba Dhale had also assaulted by wooden log, Dada Devkate, Vikas @ Nana Malgunde, Yogesh Gophane and Pravin Gophane and two to three other persons were assaulted to the deceased. The complainant

intervened and prayed for forgiving his son. However, the Applicant instigated others to assault him and he was assaulted. On account of previous quarrel, the complainant's son was assaulted by all the accused, who were armed with sticks, iron pipe. The others assaulted by fist and kick blows. Supplementary statement of the complainant was recorded on 30th June, 2018, in which it was stated that Applicant had pulled the deceased on the ground and assaulted him with wooden stick. The statement of the complainant was recorded under Section 164 of Cr.P.C., on 29th June, 2018. In the said statement, he stated that on 29th June, 2018, his son was murdered by Applicant, Avinash @ Pappu Devkate, Vikas @ Nana Malgunde, Yogesh Gophane, Dattu Gophane, Satyawan Gophane, Raju Gophane and three others had assaulted his son by iron pipe and sticks resulting in fracture of his head. He intervened and had also sustained injuries. In the said statement, specific role has not been assigned to the accused. Statement of eye witness Deepak Dharme was recorded on 21st June, 2018. He stated that Dada Devkote assaulted Akshay by wooden log on his head. Avinash @ Pappu Devkate assaulted by wooden stick and Applicant had pulled the deceased down on the ground. Avinash assaulted by wooden stick, whereas Dattu Gophane, Satyavan Gophane assaulted by iron pipe. Aaba Dhale had also assaulted by wooden stick and Dada Devkate as

well as Vikas @ Nana Kisan Malgunde, Yogesh Gophane and Pravin Gophane assaulted by wooden sticks.

6 It is pertinent to note that Dada Devkate was granted bail by the Sessions Court, whereas Vikas @ Nana Malgunde granted bail by this Court. Yogesh Gophane also granted bail by the Sessions Court. It is also submitted that Pravin Gophane was granted interim bail by this Court, but, subsequently, his Application has been withdrawn. The statement of Sajay Raut mentions that Applicant had pulled the deceased on the ground and assaulted by wooden stick. Learned APP pointed out the postmortem report and submitted that the deceased has sustained several injuries. I have perused the order dated 1st April, 2019, passed by this Court granting bail to Vikas @ Nana Kisan Malgunde. In paragraph 5 of the said order, it is observed that perusal of report reveal that the incident had occurred on 29th June, 2018. The supplementary statement of the said witnesses, complainant was also perused. It is further observed that the injuries sustained by the deceased were not possible by kick blows or fist blows. Fracture of skull possible by assault by wooden rod on head. The statement of Deepak Dharme is silent about part of body upon which the said accused had assaulted. Similarly, the order granting bail to Dada Devkate and others also indicate that they

were granted bail considering the role assigned to them. It is noted that the first informant has attributed role of pulling down the deceased to the applicant. Subsequently, there is variation in the statement. The person with similar role has been granted bail by this Court and by the Sessions Court. There are no criminal antecedents against the Applicant. Taking into consideration the aforesaid circumstances, bail can be granted to the Applicant on certain conditions.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1588 of 2019 is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.309 of 2018, registered with Baramati City Police Station, on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iii) The Applicant shall report to Baramati City Police Station once in a week between 10:00 a.m. and

12:00 noon, till filing of the charge-sheet and thereafter once in a Month on first Saturday of the month between 10:00 a.m. and 12:00 noon, till further orders;

- (ii) The Applicant shall not tamper with the prosecution evidence;
- (iii) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)