

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**4 BAIL APPLICATION NO.744 OF 2020**

RAHUL DIGAMBER AADHAV  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bhosale Abhaysingh K.  
APP for Respondent-State : Mr. A. S. Shinde.

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CORAM : V. K. JADHAV, J.  
DATE : 14.10.2020

**PER COURT :-**

1. The applicant is seeking regular bail in connection with Crime No.137 of 2019 registered with Veergaon Police Station, District Aurangabad for the offences punishable under Section 302, 323, 143, 147, 148, 149, 504, 506 of the IPC. His application with similar prayer came to be rejected by the Additional Sessions Judge, Vijapur, District Aurangabad, vide order dated 02.03.2020 in Sessions Case No.6 of 2020, below Exh.8.

2. The learned counsel for the applicant submits that the investigation is over and the charge-sheet has been submitted. The applicant is in jail in connection with the present crime

since 29.09.2019. The learned counsel for the applicant submits that the informant Dagadu Hari Jadhav who happened to be the real brother of deceased Babasaheb @ Sambha has no first hand knowledge about the incident and he lodged the complaint on the basis of the information received from one Khandu Mistri. According to the prosecution story, the said Khandu Mistri is the only eye witness to the incident. On the basis of the information received from the said Khandu Mistri, informant has alleged that the applicant and the co-accused extended the beating to the deceased Sambha in the agricultural land and at that time, the present applicant was holding an axe in his hand. The learned counsel submits that even in the complaint, there are no allegations against the applicant that he had used an axe in the assault. The learned counsel submits that during the course of investigation, the statement of the said Khandu Shankar Aalhat (Mistri) was recorded, wherein though he stated about the presence of the applicant on the spot holding an axe in his hand, however, he has also not made any allegations against the applicant to the extent that the applicant has used the axe against the deceased. The learned counsel submits that on 30.09.2019,

the statement of the said Khandu Mistri came to be recorded under Section 164 of the Cr.P.C. before the Magistrate, wherein he has clarified that during the said quarrel, co-accused Bhausahab suddenly snatched the axe from the hands of the applicant and gave a blow of the axe on the head of the deceased Sambha. The learned counsel submits that even the said Khandu Mistri in his supplementary statement recorded by the police, on the same day, has clarified the same in the manner as stated before the Magistrate in his statement recorded under Section 164 of the Cr.P.C. The learned counsel submits that though in the Post Mortem Report, particularly in column No.17, one depressed fracture on right parieto occipital region has been noted with corresponding internal injury of depressed skull fracture, however, the cause of death is "haemorrhagic shock due to head injury". The learned counsel submits that nothing was recovered at the instance of the present applicant except his clothes, however, those clothes have no blood stains. The learned counsel submits that the applicant is a young person, 21 years of age having no criminal history. The applicant has a fixed place of residence. The applicant is easily available for trial. The applicant is ready to

abide the conditions, if imposed by this Court. The applicant may be released on bail.

3. The learned APP has strongly resisted the application on the ground that *prima facie*, there is evidence about the formation of an unlawful assembly. It appears from the allegations made in the complaint that co-accused Bhausaheb took deceased Sambha along with him on his motorcycle towards agricultural field and thereafter the applicant and the other co-accused persons followed them towards the agricultural field. In the said field, the applicant and the co-accused persons including the said co-accused Bhausaheb started beating the deceased with the help of sticks, fists and kicks blows etc. The learned APP submits that there is evidence about the common object of the unlawful assembly and if co-accused Bhausaheb has done any act in prosecution of the common object of the unlawful assembly, all the members including the present applicant are liable for the act of co-accused Bhausaheb, in terms of the constructive liability as defined under Section 149 of the IPC. The learned APP submits that even eye witness Khandu has also stated about the presence of the applicant on the spot at the time of incident

holding an axe in his hands. The learned APP submits that had there been no axe in the hands of the present applicant, there was no question to use the said axe by co-accused Bhausahab. Thus, common object is apparent. *Prima facie*, there is a strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the informant has no first hand knowledge about the incident and he has lodged the complaint on the basis of the information received from the eye witness Khandu Mistri. On the basis of the information received from the said eye witness Khandu Mistri, it has been alleged in the complaint that the applicant was present during the course of the actual incident and he was holding an axe in his hand at that time. I have carefully perused the statement of Khandu Mistri. It appears that he has also stated about the presence of the applicant holding an axe in his hand. It has been alleged that the accused persons started beating to the deceased in the agricultural field and he has witnessed the same. Witness Khandu Mistri in his statement recorded under Section 164 of the Cr.P.C. before the

Magistrate and so also in supplementary police statement recorded on the same day has clarified that co-accused Bhausahab snatched the axe from the hands of the applicant and gave the blow of that axe on the head of the deceased. It further appears from the Post Mortem Report that there is only one injury on the head caused by hard and sharp weapon which resulted into the death of deceased Sambha. Though there are allegations that the present applicant was holding the axe, however, it also appears from the statement of the said Khandu Mistri that the applicant has not used that axe though he was holding during the said incident. It is well settled that the members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary, not only according to the information at his command, but also according to the extent of which he shares the community of object. As a consequence, the effect of Section 149 of the IPC may be different on different members of the same unlawful assembly. In the instant case, though it appears that the applicant was holding

the axe in his hand, however, he has not used that axe during the course of incident. It is only co-accused Bhausahab suddenly snatched the axe from the hands of the applicant and gave a blow on the head of the deceased Sambha. It does not appear from the statement of Khandu Mistri that the present applicant with the help of the said axe has committed any overt act. It further appears that there used to be a quarrel between the deceased and co-accused Bhausahab on account of the cohabitation of Vandana, who happened to be a wife of deceased Sambha. It has also been alleged in the complaint that co-accused Bhausahab has infact acted as a mediator in the settlement of the said marriage, however, deceased Sambha used to give ill-treatment to said Vandana and therefore she left his home and started residing with her parents. Deceased Sambha used to quarrel with co-accused Bhausahab on account of the cohabitation of the said Vandana and on the other hand, co-accused Bhausahab was insisting deceased Sambha to give divorce to said Vandana. In the backdrop of the same, *prima facie*, it appears that it was an independent act of co-accused Bhausahab to inflict a blow on the head of the deceased with the help of axe. The applicant is

a young person, 21 years of age having no criminal history. The applicant is taking education as per the submissions made on behalf of him. Thus, I am inclined to release the applicant on bail, however, some stringent conditions are required to be imposed such as to restrict the entry of the applicant in the village for some period to avoid the possibility of tampering the prosecution evidence. Hence, I proceed to pass the following order :

### **ORDER**

1. The application is hereby allowed.
2. The applicant RAHUL DIGAMBER AADHAV in connection with Crime No.137 of 2019 registered with Veergaon Police Station, District Aurangabad for the offences punishable under Section 302, 323, 143, 147, 148, 149, 504, 506 of the IPC, be released on bail on furnishing PB. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the following conditions :-
  - a] The applicant shall not tamper with the prosecution evidence in any manner.

- b] The applicant shall not enter within the limits of village Mahalgaon, Tq. Vaijapur, District Aurangabad for six months from the date of this order.
3. The application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-