

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1212 OF 2020

Uddhav Sopan Darade

... **Versus** ...

The State of Maharashtra

...

Mr. S.J. Salunke, Advocate for applicant

Mr. V.S. Badakh, APP for respondent/State

Mr. V.A. Bagadiya, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th DECEMBER, 2020.

ORDER :

1 Present application has been filed by original accused No.4 under Section 439 of the Code of Criminal Procedure, 1973.

2 Present applicant and co-accused have been arrested in Crime No.5/2020 registered with Aundha Nagnath Police Station, Dist. Hingoli for the offence punishable under Section 302, 143, 147, 148, 149, 323 of the Indian penal Code and Section 4 and 25 of the Arms Act. The information in respect of the offence was filed by one Pradip Kundlikrao Kute and it is in respect of the incident, that had taken place on 10.01.2020 at village Salna, Tq. Aundha Nagnath.

3 It has been vehemently submitted by learned Advocate Mr. S.J. Salunke for applicant, that the investigation is over and charge sheet has been filed, therefore, further physical custody of the applicant is not required for the purpose of investigation. Perusal of the First Information Report would show, that the informant says that there is rivalry and dispute between his family and the family of the applicant in respect of agricultural land. He also says, that the said dispute came to be resolved at the village level. He, thereafter says, that when he and his father and brother went at about 11.00 hours on 10.01.2020 to the Bus Stand, as they intended to go to Jintur, and when he went for answering nature's call and the brother had gone to drink water in a nearby hotel, at that time, suddenly one Vitthal Ganesh Darade, present applicant and Ganesh Sopan Darade came on motorcycle. Present applicant and co-accused were in the Bus Stand and it is stated, that all of them had attacked the father of the informant. It is stated that Vitthal, present applicant and Ganesh assaulted deceased Kundlik by knife. The FIR indicates long standing enmity, and therefore, false implication of the applicant cannot be ruled out. Though recovery of weapon has been seized and shown to be discovered by the present applicant, yet, that is required to be discarded. Applicant was arrested on 10.01.2020, however, the seizure on the basis of memorandum is on 15.01.2020. Such recovery cannot be said to be voluntary. In fact, the informant himself has criminal antecedents. Co-

accused Sopan and Madhav have been released on bail by this Court vide Bail Application No.515/2020, and therefore, on the ground of parity also the applicant deserves to be released on bail. On instructions, the learned Advocate for the applicant made statement that if bail is granted then he is ready to abide by the terms of bail including the condition that he will not enter village Salna, entire taluka also, till the trial is over. He, therefore, prayed for bail.

4 Per contra, the learned APP vehemently submitted, that though it is stated that the present applicant and co-accused were in the Bus Stand; yet, it was with the common intention that all the five persons had attacked deceased Kundlik. The present applicant had assaulted the deceased with knife and the Post Mortem Report would show that there were about nine stab injuries. Even the independent witnesses, who had witnessed the incident, have stated about the presence of the present applicant and co-accused and their role in particular. The knives have been recovered. Since the present applicant and co-accused are also resident of the same village, possibility of tampering cannot be ruled out. He, therefore, opposed the application for bail.

5 At the outset, it can be said that since the charge sheet has been filed, the further physical custody of the applicant is not required for the

purpose of investigation. We are, therefore, required to take into consideration what evidence collected against the present applicant.

6 Perusal of the FIR lodged by the son of the deceased as well as statement of his brother, who was accompanying the deceased, would show that they had gone for answering nature's call and for drinking water respectively and came to the place after they heard the voice for help by the deceased. Prior to they came to the spot, it is stated, that the present applicant and co-accused were present in the Bus Stand. After Vitthal, present applicant and Ganesh arrived at the spot. So also, the informant and his brother came. It is stated that they saw applicant, Vitthal and Ganesh giving blows by means of knife on the chest, back and other parts of the body of Kundlik. The role attributed to the present applicant in FIR is that he has given blows by knife to the deceased. Definitely the enmity has been stated which is on the count of dispute regarding agricultural land, however, it is also stated that the said dispute was resolved at the village level and no complaint was filed. Therefore, at this stage applicant cannot be given any advantage of the said dispute and conclusion cannot be done that he has been falsely implicated. Three accused persons i.e. Vitthal, present applicant and Ganesh were holding knives and it is stated that they all had given blows on the chest and other parts of the body of deceased. At this stage itself if we

consider Inquest Panchnama and Post Mortem Report, then the PM. report gives in all 11 surface injuries and they are stated to be ante mortem. Out of those 11 injuries, 9 are stab injuries. Further, as regards the internal examination it is said that the liver had consequential stab wound, so also to the spleen and right kidney. The probable cause of death has been given as, "The findings are consistent with probable cause of death Hypovolemic shock". Though final report is reserved, yet, there is prima facie evidence to show that a death is homicidal.

7 There is recovery at the instance of the present applicant in respect of knife. Whether it is voluntarily or not would be the matter of scrutiny after the evidence is led, yet, at this stage, only prima facie facts and evidence are required to be considered. There are eye witnesses to the incident. Informant himself and his brother are the eye witnesses. Further, there are independent witnesses. Witness Ramesh Sangle states that he along with Sheshrao Nagre had gone to the agricultural centre in Bus Stand for purchase of pesticides and at that time when they heard noise they went near the injured and witnessed the incident. Witness Dnyande Palve is a hotel owner, who has his hotel in the Bus Stand. He has also stated about witnessing the incident. Cousin brothers and nephew of the deceased have also given statement under Section 164 of Cr.P.C. regarding witnessing the

incident. Therefore, when the evidence has been collected against the applicant, he cannot be released on bail.

8 As regards the release of the other two accused by this Court is concerned; ground of parity is not available to the present applicant, as the role attributed to those two persons was different. It was stated that they had caught hold of the deceased when the present applicant had given actual blows. Question was also raised in respect of their arrival or their presence shown in the matter. Therefore, the learned Additional Sessions Judge, before whom earlier attempt has been made by the present applicant to get bail under Section 439 of Cr.P.C., has rightly considered that the said ground of parity is not available to the present applicant.

9 Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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