

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

BAIL APPLICATION NO.1283 OF 2020

Daddy @ Babasaheb Maruti Vaykar

Applicant

Versus

The State of Maharashtra

Respondent

Mr.N.V.Gaware, advocate for the applicant.

Mr.A.A.Jagatkar, APP for the Respondent.

Mr.Sk. Mazhar A. Jahagirdar, advocate for the informant.

BAIL APPLICATION NO.1325 OF 2020

Sukhdev s/o Bhanudas Ingale

Applicant

Versus

The State of Maharashtra

Respondent

Mr.N.V.Gaware, advocate for the applicant.

Mr.A.A.Jagatkar, APP for the Respondent.

Mr.Sk. Mazhar A. Jahagirdar, advocate for the informant.

**AND
CRIMINAL APPLICATION NO.2001 OF 2020 IN
BAIL APPLICATION NO.1325 OF 2020**

Haushiram s/o Gavaliram Salve

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr.Sk.Mazhar A. Jahagirdar, advocate for the applicant.

Mr.A.A.Jagatkar, APP for Respondent No.1.

Mr.N.V.Gaware, advocate for Respondent No.2.

CORAM : V.K.JADHAV, J.

DATE : 04th December, 2020.

PC :

1 For the reasons stated in Criminal Application No.2001 of 2020, the prayer of the applicant for intervention and to assist the learned Public Prosecutor is allowed and the application is accordingly disposed of.

2 So far as Bail Applications No.1283 of 2020 and 1325 of 2020 are concerned, the applicants are seeking bail in connection with Crime No.950/2020, registered with Shrirampur City Police Station, District Ahmednagar, for the offences punishable under Sections 302, 324, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 3, 5, 7 and 25 of the Arms Act.

3 Heard both the sides.

4 The learned Counsel for the applicants, in both these applications, submit that the investigation is over and charge sheet has been submitted. The applicants are in jail, in connection with present crime, since long. As per the allegations made in the complaint, on 23rd May, 2020 at about 7 p.m., initially quarrel had taken place with verbal abuses on account of dispute in respect of plot and house and thereafter applicants and co-accused persons, armed with deadly weapons like pistol, axe, sword, sickle, spade, pipe, rod and wooden log, went towards the house of the informant. It is alleged

that co-accused Raju Gangurde, who was holding pistol in his hand, fired on the chest of deceased Ganesh and deceased Ganesh fallen on the ground.

5 The learned Counsel submit that there are allegations against the applicants to the extent that they were armed with certain weapons, however, so far as deceased Ganesh is concerned, except the injury caused by the firearm, no other injury was noticed on his person during the *post mortem* examination. It is further submitted that the cause of death is “haemorrhagic shock due to firearm injury”. There are two injuries mentioned in column no.17 of the *post mortem* report, one is rifled firearm enter wound circular below the acromioclavicular joint piercing skin, subcutaneous tissue fracturing the first rib and then piercing the parital visceral pleura and upper and lower lobes of the lung; and the second injury is contused abrasion on both the shoulders but no fracture on palpation.

6 The learned Counsel submit that even the other injured witnesses have not ascribed any specific role to these applicants though there are allegations that the particular applicant was holding a particular weapon at the time of incident. The learned Counsel submit that all the injured witnesses have sustained simple injuries in the alleged incident. It is also submitted that the incident had taken place on account of dispute in respect of plot and the house. There is no criminal history. The applicants are available for trial. The

applicants are having fixed place of residence. The applicants are ready to abide by the conditions, if enlarged on bail. The learned Counsel, therefore, submit that the applicants may be released on bail.

7 The learned A.P.P. assisted by Mr.Mazhar, learned Counsel for the informant, has strongly resisted these applications on the ground that names of the applicants are mentioned in the First Information Report. The learned A.P.P. submits that there is evidence of formation of unlawful assembly with common object. There was a premeditated assault and in prosecution of common unlawful object, all the accused persons, including the applicants herein, armed with deadly weapons, went to the house of the informant. The learned A.P.P. submits that in terms of provisions of Section 149 of the Indian Penal Code, it is the constructive liability and as such, each and every member of the assembly would be liable for the act of each and every member. *Prima facie*, there is a strong case against the applicants. There is possibility of tampering with the prosecution evidence if the applicants are enlarged on bail. He, therefore, submits that the applications may be rejected.

8 On the similar set of allegations, this Court (**Coram: V.K.Jadhav, J.**), by order dated 22nd October, 2020 in Bail Application No.1133 of 2020 and connected Bail Applications, granted bail to the applicants in Bail Applications No. 1133/2020, 1158/2020,

1160/2020 and 1172/2020, with the following observations in para 8 of the said order:

“8 On going through the allegations made in the complaint and on perusal of the charge sheet, though I find that names of all the applicants are mentioned in the First Information Report and allegation about holding of weapons by each of them, however, it appears that so far as deceased Ganesh is concerned, co-accused Raju Gangurde has used pistol and fired on the chest of the deceased. On perusal of the *post mortem* report, particularly column no.17, it appears that deceased Ganesh had sustained two external injuries and injury no.1 is rifled firearm enter wound, as detailed in column no.17 and second injury is contused abrasion on both the shoulders. The probable cause of death is, “haemorrhagic shock due to fire arm injury”. It is, thus, clear that so far as injury no.1, as mentioned in column no.17 of the *post mortem* report is concerned, the author of the said injury is co-accused Raju Gangurde. It further appears that though the applicants, holding deadly weapons in their hands, allegedly went to the house of deceased informant along with co-accused Raju Gangurde, they had not used those weapons against the deceased. It is well settled that the members of an unlawful assembly may have community of object 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 to which he shares the community of object, and as a consequence of this, the effect of Section 149 of the Indian Penal Code may be different on different members of the said unlawful assembly."

9 In the instant applications, though there are allegations that applicant Daddy @ Babasaheb Maruti Vaykar (in B.A. 1283 of 2020) was holding axe in his hand and used the axe for inflicting injury on the head of the deceased, however, the *post mortem* report is silent. There is no injury on the head of the deceased and the cause of death is haemorrhagic shock due to firearm injury. It has been specifically alleged that co-accused Raju Gangurde, who was holding pistol in his hand, fired on the chest of deceased Ganesh. So far as applicant Sukhdev Bhanudas Ingale (in B.A. No.1325 of 2020) is concerned, his name is not mentioned in the First Information Report nor any role is ascribed to him. There is no criminal history. Both the applicants are having fixed place of residence. They are easily available for trial. So far as tampering with prosecution evidence is concerned, that can be taken care of by imposing certain conditions such as, restricting the applicants from entering within the limits of Late Vasti, Nipani Wadgaon Shivar, Tq. Shrirampur, District Ahmednagar. In view of the same, I am inclined to release the applicants on bail with certain conditions.

10 Hence, the following order:

(i) Bail Applications No.1283 of 2020 and 1325 of 2020 are allowed.

(ii) The applicant Daddy @ Babasaheb Maruti Vaykar (in B.A. 1283 of 2020) and the applicant Sukhdev Bhanudas Ingale (in B.A. No.1325 of 2020), in connection with Crime No. 950/2020, registered with Shrirampur City Police Station, District Ahmednagar, for the offences punishable under Sections 302, 324, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 3, 5, 7 and 25 of the Arms Act, be released on bail on their furnishing Personal Bond of Rs.15000/- (Rs.Fifteen Thousand) each with one surety each of the like amount, on the following conditions:

(a) The applicants shall not tamper with the prosecution evidence, in any manner.

(b) The applicant Daddy @ Babasaheb Maruti Vaykar (in B.A. 1283 of 2020) and the applicant Sukhdev Bhanudas Ingale (in B.A. No.1325 of 2020), shall not enter within the limits of Late Vasti, Nipani Wadgaon Shivar, Tq. Shrirampur, District Ahmednagar, till conclusion of the trial.

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11 Bail Applications No.1283 of 2020 and 1325 of 2020 are
accordingly disposed of.

(V.K.JADHAV)
JUDGE

adb