

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

938 BAIL APPLICATION NO.1358 OF 2020

1. MAHADEV S/O SONAJI DHOKE
2. SHANTANU @ DEVA S/O MAHADEV DHOKE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Jadhav Kiran D.
APP for Respondent-State : Mr. A. A. Jagatkar.

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**CORAM : V. K. JADHAV, J.
DATE : 03.12.2020**

PER COURT :-

1. The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No.2 - SHANTANU @ DEVA S/O MAHADEV DHOKE. Leave granted. Application to the extent of applicant No.2 Shantanu is disposed off as withdrawn.

2. The applicant No.1-MAHADEV S/O SONAJI DHOKE is seeking regular bail in connection with Crime No.242 of 2020 registered with M.I.D.C. Waluj Police Station, District Aurangabad for the offences punishable under Sections 302, 201 read with Section 34 of IPC. His application with similar

prayer bearing Bail Petition No.729 of 2020 came to be rejected by the learned Additional Sessions Judge, Aurangabad.

3. The learned counsel for the applicant submits that the investigation is over and the charge-sheet has been submitted. As per the allegations, deceased Narayan had constructed the house of applicant on contract basis however, the present applicant has not paid him the entire amount as per the contract. On the day of incident, the deceased had gone to the house of the applicant for recovery of the said amount. It is further alleged that the quarrel had taken place between the applicant, his son at one side and the deceased at another side. During the said quarrel, the deceased Narayan had made certain utterances with regard to the wife of the applicant. In consequence thereof, co-accused Shantanu, whose application seeking bail came to be withdrawn today, as of sudden, took out the knife and repeatedly inflicted the blows of knife on the body of the deceased. So far as the applicant is concerned, there are allegations to the extent that the applicant has extended the beating to the deceased by fists and kicks blows.

4. The learned counsel submits that the incident had taken place as of sudden without any pre meditation. *Prima facie*, it does not appear that the present applicant has shared the common intention with his son co-accused Shantanu. The applicant is in jail since 16.04.2020. The applicant has his roots in the society. He is easily available for trial. There is no question of tampering with the prosecution evidence. Co-accused Shantanu is behind the bars. The applicant is 58 years of age. The applicant may be released on bail.

5. The learned APP has strongly resisted the application on the ground that there are eye witnesses to the alleged incident. Witness Umesh Balu Jadhav has witnessed the incident. The learned APP submits that though deceased had gone to the house of the applicant for recovery of the amount, the applicant and his son co-accused Shantanu both assaulted the deceased and particularly co-accused Shantanu has inflicted the blows on the various parts of body of the deceased with the help of knife. The learned APP submits that there are in all 17 external injuries on the person of the deceased and out of those injuries, 15 injuries are stab wounds. The cause of death

is "Hemorrhagic shock due to multiple stab injuries". The learned APP submits that at this stage, inference about common intention cannot be drawn and it is for the Trial Court to consider the same during the full fledged trial of the case. *Prima facie*, there is a strong case against the applicant. The applicant may not be released on bail.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the deceased had taken the contract of construction of the house of the applicant and even though certain amount was agreed to be paid to the deceased, the applicant has not paid the entire amount even after completion of the construction of the house. On 15.04.2020, by informing the family members, the deceased had gone to the house of the applicant for recovery of the said amount. Since deceased did not return, the informant has requested his maternal brother Umesh to go to the house of the applicant and find out as to what was going on. Witness Umesh Jadhav went to the spot along with his maternal brother Shailesh Chavan on a motorcycle. On reaching there, he has noticed that the quarrel was going on between the

applicant and his son Shantanu @ Deva at one side and the deceased at other side, on account of recovery of the balance amount of the contract. Witness Umesh has also stated that the quarrel was also going on, on account of the certain utterances of words by the deceased in respect of the wife of the applicant (mother of co-accused Shantanu). During the said quarrel, deceased told that he will go to the house of the applicant, meet his wife (mother of co-accused Shantanu) and recover the amount. Some of the witnesses have stated in their statements that it is learnt by them about the illicit sexual relations between deceased and co-accused Sangita (wife of the applicant). It appears that the quarrel was triggered because of the said utterances made by the deceased. It further appears that as of sudden, in the hit of anger, co-accused Shantanu took out the knife from his pocket and started inflicting the blows on the various parts of the body of the deceased. *Prima facie*, it is difficult to observe that the present applicant has also shared the said common intention. *Prima facie*, it appears that it was solely individual act of the co-accused Shantanu. The same is also evident for the reason that the present applicant allegedly extended the beating to the

deceased with fists and kicks blows only and he was not armed with any weapon nor he had allegedly used any weapon in the assault. The applicant co-accused Shantanu has withdrawn his application today. Thus, considering the entire aspect of the case, I am inclined to release the applicant on bail with certain conditions. Furthermore, the applicant is an aged person and in jail since long. Hence, I proceed to pass the following order :

ORDER

1. The application is hereby allowed.
2. The applicant MAHADEV S/O SONAJI DHOKE in connection with Crime No.242 of 2020 registered with M.I.D.C. Waluj Police Station, District Aurangabad for the offences punishable under Sections 302, 201 read with Section 34 of 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 condition :-
 - a] The applicant shall not tamper with the prosecution evidence in any manner.

3. Application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-