

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

919 BAIL APPLICATION NO.358 OF 2021

Munjaji S/o Maroti Nagargoje
Age: 50 years, Occ.: Agri. & Business
R/o. Wagdewadi, Tq.Gangakhed,
Dist.Parbhani.
(At present is in Jail)

..Applicant
(Orig. accused)

VERSUS

The State of Maharashtra

..Respondent

...
Advocate for Applicant : Shri R.N.Dhorde, Senior Counsel i/b.
Shri Vikram R. Dhorde
APP for Respondent : Shri S.P.Sonpawale
Advocate for Intervenor : Shri M.P.Kale

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CORAM : M.G.SEWLIKAR, J.

DATE: 9th September, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.
2. Facts leading to this application are that the informant aged 60 years was at home on 28th July, 2020 at 08:00 p.m. He has three daughters by the name of Subhangi, Rajashri and Tejaswaini and two sons by the name of Ravi and Yash. On 28th July, 2020 at 08:00 p.m., he saw accused Dipak Munjaji Nagargoje with two unknown persons. Accused Dipak said to the informant Tryambak Maroti Mundhe to call his (informant's) son

Ravi. Accused Dipak did not like Ravi chitchatting with sister of accused Dipak. Soon thereafter applicant Munjaji Nagargoje, accused Waman Nagargoje and accused Murali Nagargoje came there. Informant said to accused Dipak that Ravi had been to Parbhani and he would call him up in the morning. Thereupon, accused Dipak, who was armed with a scythe delivered a blow of it on the left thigh of the informant. Accused Dipak again assaulted the informant with scythe but the informant warded it off by his hands owing to which he sustained injury on his thumb of left hand and on the left portion of the neck. Soon thereafter, applicant Munjaji delivered a blow of stick on the hand of the informant. On hearing commotion, Rajashri and Shubhangi came there and tried to rescue the informant. At that time accused Dipak and others started abusing Shubhangi and Rajashri. At that time, accused Dipak molested Rajashri by holding her hand and pulling her towards him. Since Rajashri offered resistance, accused Dipak delivered a blow of scythe on her both hands and back. Applicant Munjaji delivered a blow of stick on the hand of Rajashri. When Shubhangi came to rescue Rajashri, accused Dipak molested Shubhangi by pulling her towards him. At that time, two unknown persons were aiding him. Shubhangi started screaming. Accused Dipak delivered a blow of scythe on her left hand and applicant Munjaji beat her by means of a stick.

3. The informant was shifted to the hospital in an Auto. He was admitted in Spandan Hospital, Parbhani. He died during treatment. Initially, offence was registered under Sections 307, 354-A, 324, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act. The deceased died on 12th August, 2020. Dead body was sent for post mortem. Investigation was carried out. Statements of witnesses were recorded and after disclosure of the offence, charge-sheet was submitted in the Court.

4. Heard Shri R.N.Dhorde, learned Senior Counsel for the applicant, Shri S.P.Sonpawale, learned APP for the respondent-State and Shri M.P.Kale, learned counsel for the intervenor.

5. Shri Dhorde, learned Senior Counsel for the applicant submitted that the daughter of the applicant and sister of accused Dipak by name of Sandhyarani and Ravi, the son of the informant – deceased, are in love with each other. He submitted that the statements of the witness Shubhangi Mundhe – injured shows that her father i.e. the informant was ready for the marriage of Ravi with Sandhyarani. He submitted that therefore there was no reason for the applicant to have any animus against the informant and his family members. He further submitted that the applicant was not present at the spot. He

came to the spot only after the happening of the incident. He submitted that statement of witness Akash Mahadeo Mundhe shows that accused Dipak had gone to the house of the informant alone with a scythe. At that very moment, Ravi called up witness Akash and told him that some untoward incident had happened and witness Akash should go to the house of the informant. Shri Dhorde, learned Senior Counsel for the applicant further argued that statement of Akash further shows that when witness Akash went to the house of the informant, he found the informant and his two daughters in injured condition. The applicant was dragging accused Dipak by saying as to why accused Dipak had gone there and why he had picked up quarrel. Soon thereafter accused Waman Nagargoje came there with a Scorpio and the applicant and accused Dipak went away in the Scorpio. He further submitted that the statement of witness Swaraj Balaji Mundhe also shows that accused Dipak alone is the author of the crime. He submitted that he found accused Dipak having altercation with the informant and two ladies. His statement further shows that accused Dipak beat the informant by some weapon. Statement of witness Sachin Prakash Hatagale also shows the same position. He submitted that the statement of witness Dhanraj also shows the same position. He submitted that statements of these witnesses clearly show that the

applicant was not present at the spot of the incident. However, he went to the spot of the incident only after the incident was over and he had taken accused Dipak in the Scorpio. He further submitted that the statements of the informant and two injured witnesses show that the applicant was not holding any dangerous weapon. He was holding a stick. He further submitted that though there is allegation in the First Information Report that the applicant beat the deceased by means of a stick, post mortem report belies this contention. He submitted that this Court in Bail Application No.1171 of 2020 (Coram : V.K.Jadhav, J.) and In Bail Application No.1111 of 2020 (Coram : V.L.Achliya, J.) has released accused Dhanraj Dnyoba Phad and Mahesh Chandrashekhar Mundhe on bail. The case of the applicant is similarly situated. He, therefore, prayed for releasing the applicant on bail. He placed reliance on the case of ***Shobhan Singh Khanka Vs. State of Jharkhand [(2012) 4 Supreme Court Cases 684]***

6. Shri Sonpawale, learned APP for the respondent-State and Shri M.P.Kale, learned counsel for the intervenor submitted that the deceased was 60 years of age. The applicant, accused Dipak and others assaulted the informant and his two daughters without any provocation. Both of them submitted that the applicant has criminal background. Offences under section 307,

395 have been registered against the applicant. Offences under Section 302, 307, 354-A, 147, 148 of the Indian Penal Code have also been registered against the applicant. They submitted that applications of applicant Waman Nagargoje and Murali @ Muralidhar Maroti Nagargoje have been rejected by this Court (Coram : Smt.Vibha Kankanwadi, J.) in Criminal Application Nos.1412 of 2020 and 1487 of 2020. They submitted that Special Leave Petition preferred by these two accused i.e. Waman Nagargoje and Murali @ Muralidhar Maroti Nagargoje have been rejected by the Hon'ble Apex Court. They submitted that the presence of the applicant has been clearly stated by the informant and his two daughters. They, therefore, prayed for rejection of the application.

7. So far as presence of the applicant at the spot of the incident is concerned, the statements of the informant, the injured witnesses Shubhangi and Rajashri clearly show that the applicant, his son Dipak and two unknown persons were there at the spot. Their statements further show that the applicant assaulted the informant/deceased Tryambak Maroti Mundhe by means of a stick. Statements of the two injured ladies also show that they were assaulted by the applicant Munjaji by means of a stick. Medical certificate of Rajashri shows that she had CLW over right knee joint 1Inchx1/2cmx1/2cm. She has also incised wound

between left axilla and scapula and incised wound over left knee joint. Thus, medical certificate clearly shows that injured witness Shubhangi was also assaulted by means of a stick.

8. It is true that the statements of the witnesses referred to above by Shri Dhorde, learned Senior Counsel for the applicant show that the applicant came to the spot after the incident. However, this clearly shows that he was present at the spot of the incident. It will be clear only during the trial as to whether the applicant had come to the spot of the incident after the incident was over or during the incident. The statements of the injured witnesses i.e. the daughters of the informant recorded under Sections 161 and 164 of the Code of Criminal Procedure clearly show that the applicant Munjaji beat their father on his chest and back. Applicant Munjaji, accused Murali and accused Waman delivered blows of sticks on the leg of Rajashri. The applicant and others also beat her by means of a stick on her left leg, hand and back. Similar is the statement of witness Rajashri. On the basis of these statements, it is clear that there is sufficient evidence against the applicant. Therefore, his application for bail cannot be considered. Application, therefore, stands rejected.

**(M.G.SEWLIKAR)
JUDGE**