

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

BAIL APPLICATION NO.1397 OF 2020

Balaji @ Balu Nivarti Gaikwad = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.Satej S.Jadhav, Advocate for Applicant;

Mr.NT Bhagat, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 27th January, 2021

PRONOUNCED ON: 12th FEBRUARY, 2021

PER COURT :-

1. Present applicant has been arrested in connection with CR No.89/2019 registered on 25.4.2019 with Sambhaji Nagar police station, District Beed for the offences punishable under Sections 302, 120(B), 147, 148, 149, 323, 504, 506 of IPC and under Sections 4/27 of Indian Arms Act. He has filed the present application under Section 439 of Cr.P.C.

2. It will not be out of place to mention here that the applicant had earlier filed Bail Application No.966/2019 for regular bail. It was dismissed, as withdrawn, by this court on 19.8.2019.

3. Heard Shri Satej Jadhav, learned Advocate

for the applicant and Shri NT Bhagat, learned APP for the Respondent-State.

4. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that father of the informant was murdered on 24.3.2019. He went to the spot after noticing that his father has not returned for a considerable time. The incident has taken place at about 10.45 pm to 1.00 pm. He had seen the present applicant holding a sword. He states that other co-accused were also holding sword. If we consider the post mortem report, it states that there were 17 multiple chop wounds. There are statements of the witnesses, who say that they had seen the applicant holding the sword. But, none of them have given the situs chosen. There is no recovery from the present applicant. Only one sword has been recovered from accused No.1 – Magar Maruti Ballal. In fact, the applicant himself is a disabled person. He is taking treatment with Dr.DY Patil Medical College & Pimpri hospital, Pune since 1.4.2019. Medical report shows that he himself is having disability to move the right shoulder. How it would have been possible for him to hold a sword and then assault. The trial has not started and, therefore, under such circumstance, he deserves to be released on bail.

5. Per contra, learned APP vehemently resisted the application by submitting that the deceased was, in fact, a respectable person from

the village. About six months prior to the incident, a girl from Shikalkari community had ran away with a boy viz. Ajay, son of Ashok Bhosale. However, the boy was murdered and his dead body was buried. The relatives of Bhosale were in a move to take revenge and, therefore, deceased Pandurang Gaikwad was pacifying those persons by saying that they would take out some other way after Anniversary(*Jayanti*). Thereafter, meeting was held at about 10.45 pm to 11.15 pm between accused No.1, present applicant, one Pradeep Gaware, brother of Ajay Bhosale (handicapped), his father and others with one Sachin Kagde. When these persons saw the informant, they stopped the discussion. But then the informant informed the said fact to his father on phone. Thereafter, present applicant and one Dayanand Ballal met the deceased in Rode Chowk and they had discussion. Thereafter, the deceased went to the place where distribution of water in the ward was going on. When the informant found that his father is not returning, he went to place and saw in the focus of the Head-light of his motor-cycle that the present applicant and co-accused were holding sword; wooden sticks; logs etc. He found his father in a pool of blood. Thereafter, he lodged the report. There are statements of eye-witnesses, who have seen the present applicant assaulting the deceased with sword. Post mortem report shows that there were 17 chop injuries over the head, neck, face etc. It shows the brutality, with which the assault was made. Though there is recovery of only one sword from Magar Ballal, that

does not mean that present applicant had not used any weapon. The incident has created terror in the vicinity and, therefore, the applicant does not deserve any discretionary relief.

6. At the outset, the investigation of the crime is over and charge sheet has been filed. The post mortem report shows, there were 17 chop wounds/multiple injuries, indicating that the death is homicidal in nature. The discovery is from accused No.1 and it is only one sword. However, it is to be noted that, apart from the informant, there are eye-witnesses, who had seen the present applicant holding the sword. Now, as regards his disability to hold any object with right hand is concerned, he will have to lead evidence and no observation can be made by this Court at this prima facie stage while considering bail, as it will affect the merits of the case.

7. Therefore, when there is direct evidence against the present applicant and, as aforesaid, his earlier bail application was withdrawn, when at that time also, charge sheet was filed, then it can be seen that there is no change in the circumstance. No different view is required to be taken by this Court now. The application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE