

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

BAIL APPLICATION NO.1485 OF 2020

Madhav s/o Gangadhar Gatate

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh for applicant.

Mr. S. Y. Mahajan, APP for respondent – State.

.....
WITH

**CRIMINAL APPLICATION NO.49 OF 2021
IN BA/1485/2020**

Satish s/o Balaji Gatate

... Applicant

Versus

1. Madhav s/o Gangadhar Gatate

2. The State of Maharashtra

... Respondents

.....
Mr. U. L. Momale, Advocate for applicant.

Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh for respondent No.1.

Mr. S. Y. Mahajan, APP for respondent No.2 – State.

.....
WITH

BAIL APPLICATION NO.1440 OF 2020

1. Pratap s/o Sambhaji Gatate

2. Rahul s/o Pratap Gatate

... Applicants

Versus

The State of Maharashtra

... Respondent

.....
Mr. V. D. Gunale, Advocate for applicants.

Mr. S. Y. Mahajan, APP for respondent – State.

.....
WITH

**CRIMINAL APPLICATION NO.47 OF 2021
IN BA/1440/2020**

Satish s/o Balaji Gatate

... Applicant

Versus

1. Pratap s/o Sambhaji Gatate

2. Rahul s/o Pratap Gatate

3. The State of Maharashtra

... Respondents

.....
Mr. U. L. Momale, Advocate for applicant.
Mr. V. D. Gunale, Advocate for respondent Nos.1 and 2.
Mr. S. Y. Mahajan, APP for respondent No.3 – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th January, 2021

ORDER :

. All the applicants seeking bail under Section 439 of the Code of Criminal Procedure have been arrested in connection with Crime No.63 of 2020 dated 02-05-2020 registered with Wadhwana (Badruk) Police Station, District Latur for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act, 1951.

2. It will not be out of place to mention here that as regards applicant – Madhav is concerned, he had approached this Court by filing Bail Application No.679 of 2020, subsequently, he had withdrawn the said application in view of filing of charge-sheet and at that time, this Court had granted him liberty to file an application for regular bail before the Sessions Court. Therefore, that withdrawal of the application may not be a hurdle for the present application filed by him, it is after filing of charge-sheet.

3. Heard learned Senior Counsel Mr. R. S. Deshmukh for the applicant in Bail Application No.1484 of 2020, learned Advocate Mr. V. D. Salunke for the applicant in Bail Application No.1440 of 2020 and learned APP Mr. S. Y. Mahajan for respondent – State assisted by learned Advocate Mr. U. L. Momale representing the informant.

4. It has been vehemently submitted by the learned Senior Counsel for the applicant – Madhav that perusal of the FIR would show that though certain role has been attributed to the applicant, yet, since the investigation is over, the weapons have been seized, further physical custody of the applicant is not required. This Court has granted bail to co-accused Gangadhar in Bail Application No.1069 of 2020 on 07-10-2020, which is definitely after the perusal of the charge-sheet. The present applicant is also similarly situated. The learned Additional Sessions Judge just rejected the bail application filed by the present applicant by submitting that active role has been attributed to the present applicant. A very cryptic order has been passed. The applicant is ready to cooperate with the investigation.

5. Learned Advocate appearing for the applicants – Pratap and Rahul has also made submissions on the similar ground. Both the learned Advocates for the applicants have submitted that the alleged motive or reason for the dispute appears to be the property dispute, which again relates to the enmity between the parties and, therefore, false implication cannot be ruled out. In fact, other five accused persons have been released by this Court. Therefore, on the ground of parity also, they are entitled to be released on bail.

6. Per contra, the learned APP assisted by the learned Advocate representing the informant strongly opposed the bail applications and submitted that there is ample evidence against the present applicants. The applicants had played active role. Father of the informant has expired due to the injuries caused by the present applicants. Other witnesses including the informant have received grievous injuries. Parties are residing in the same village and, therefore, possibility of tampering

of evidence as well as commission of another crime of serious nature cannot be ruled out. It was also submitted that the present applicants cannot take advantage of releasing the Gangadhar on bail by this Court, as in the order itself, it is stated that since the said applicant is aged 73 years, the discretion has been used by this Court. Therefore, learned APP prayed for rejection of the applications.

7. At the outset, it is to be noted that while releasing co-accused – Gangadhar, this Court has specifically observed that the name of the said accused is mentioned in the FIR with specific role attributed to him, yet, the Court was inclined to consider the application for the reason that Gangadhar is 73 years old person. The other observations are in respect of the contentions in the FIR. Therefore, what was weighed with this Court was the age of the accused and, therefore, the present applicants are not entitled for release on bail on the ground of parity.

8. The charge-sheet has been filed after completion of the investigation and, therefore, the physical custody of the applicants is not required for the purpose of investigation. Now, in connection with the present bail applications, we are required to consider what is the evidence that is produced by way of charge-sheet. Informant himself is the injured eye witness. He had come with the case that on 02-05-2020 he was admitted at Dhanwantari Hospital, Udgir, where the police recorded his statement. According to him, his family is possessing agricultural land in Survey No.204 situated at village Deulwadi and towards north side, there is agricultural land of Pratap Gatate. On 01-05-2020, in the morning, his younger brother Datta, Sangam @ Sangameshwar and JCB operator Rahul Shivaji Gatate were in the field. They were intending to erect canal in the field with the help of JCB. The informant, his father and elder brother

Rudrappa were in the house. At about 09.00 a.m., Sangameshwar informed the informant on telephone that Pratap Gatate, Sambhaji Gatate, Suraj Gatate and Sunita Gatate were obstructing them in their work. Thereafter, the informant along with his father Balaji and brother Rudrappa went to the field on motorcycle, at that time, Sangameshwar and Datta were standing below the tree and Pratap, Sambhaji, Suraj and Sunita were abusing them and were telling them not to erect canal. Balaji convinced both the parties and thereafter, when informant and his brothers started proceeding towards cattle shed, Rahul, Gangadhar, Madhav, Dhananjya and Rohit Gatate came there. Madhav and Dhanraj were having axe in their hands. Gangadhar, Pratap and Rahul were having sticks in their hand. Suraj and Sunita picked up the stones. Pratap Gatate threatened to see the informant and his inmates and had thrown chilly powder in the eyes of Sangmeshwar. Madhav gave blow of axe on the head of Sangameshwar. He also gave blow of axe on his hands near elbow and shoulder. Rudrappa and Balaji went to rescue Sangameshwar, at that time, Rahul gave blow of stick on their hand. Dhananjay Gatate threatened Rudrappa to kill and gave blow of axe on his head and left ear. Pratap Gatate gave blow of stick on Rudrappa. Gangadhar and Madhav gave blows of kicks to Rudrappa when he fall on the ground. Madhav and Gangadhar gave blow of axe on the head of Balaji. Pratap and Rahul gave blows of sticks on right shoulder and right wrist of Balaji and thereby caused him fracture injures. Gangadhar gave blow of axe from backside in the head of the informant. Pratap and Rahul gave blows of sticks on his thighs and in the back. Sunita pelted stones on his legs. Pratap gave blows of axe on the face and head of Datta. After the incident, all the injured were shifted to the Government Hospital, Udgir. Subsequently, Rudrappa was referred to Civil Hospital at Latur, where he died.

Thereafter, on the basis of the said statement, Wadhwana Police registered Crime No.63 of 2020 against accused persons.

9. It is to be noted that after the offence was registered, the panchanama of the spot has been carried out on the same day itself and from the spot, certain articles have been seized. It is inclusive of sticks, axe and it is stated that they had blood stains on the same. Four pieces of one broken stick has also been recovered and the handle of the axe was separate from the blade. It indicates the force with which the assault would have been given. Further, from accused – Dhanraj, there is discovery of another axe under Section 27 of the Indian Evidence Act, which is effected on 08-05-2020. There are statements of witnesses including the statements of injured as well as eye witness, which support the prosecution story. Each and every witness had attributed role to the present applicants. The post-mortem report would show that deceased had sustained about 13 surface injuries and the internal examination showed injuries under scalp. There was depressed wedge shape skull fracture. It is stated that there were corresponding injuries on the head. Though the viscera has been preserved, the primary opinion that is given is death due to head injury. Further, the injury certificates show that witness Datta Balaji Gatate had suffered four simple injuries and one grievous injuries, Satish Balaji Gatate had suffered in all six injuries and all are stated to be simple. Sangameshwar Gatate had suffered three simple and one grievous injury, one of which is fracture. Thus, taking into consideration the injuries those have been sustained by the witnesses, the weapons those have been used, statements of the witnesses, attributing specific role to the present applicants, it can definitely be said that there is evidence against both the applicants. Quarrel had taken place due to the boundary dispute and, therefore, possibility of similar serious incident after the release

of the applicants cannot be ruled out. Therefore, having considered both the grounds that is availability of the evidence as well as possibility of such incident in future, this is not a fit case where the discretion of this Court under Section 439 of the Code of Criminal Procedure should be exercised and the applicants should be released on bail. Hence, both bail applications stand rejected, whereas criminal applications for assist to public prosecutor stand allowed.

[SMT. VIBHA KANKANWADI, J.]

scm