

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

960 CRIMINAL APPEAL NO. 438 OF 2021

SAYYAM PRITAM GATAGAT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. R. B. Deshmukh
AGP for Respondent no.1-State : Mr. S. P. Deshmukh
Advocate for Respondent no.2 : Mr. M. P. Tripathi h/f
Mr. Raviraj R. Chandak
....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATED : 21st DECEMBER, 2021.**

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ORDER : (PER : SANDIPKUMAR C. MORE, J.)

1. By consent of the parties, heard finally at the stage of admission.
2. The appellant i.e. original accused no.1 in Special Case No. 36 of 2021, has challenged the order dated 19/06/2021 below Exh.1, passed by the learned Additional Sessions Judge-2, Latur (Hereinafter referred to the learned trial court) regarding rejection of his bail application. The appellant, thus, seeks his release on bail in aforesaid special case, arising out of Crime No. 127 of 2021, registered with Gandhi Chowk Police Station, Latur for the offence punishable under Sections 302, 212 read with 34 of IPC and under

Section 3 (2)(5), 3(2)(vi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

3. The informant i.e. present respondent no.2 lodged the FIR with the aforesaid police station on 23/01/2021 mentioning that his younger brother, Ganesh i.e. deceased in the present crime, was serving in Preetam Suitcase shop of co-accused Vandana at Gunjgolai, Latur. The applicant is a son of Vandana. On 22/02/2021 when the informant called his brother Ganesh around 10.00 p.m., Ganesh told him that he would come home shortly. Thereafter cell phone of Ganesh found to be switched off at about 11.00 p.m. Then at about 11.30 p.m. co-accused Vandana with one Alkesh came to the house of informant and told him that Ganesh was serious and he sustained injury and had been shifted to Government Hospital, Latur. On reaching the said hospital, the informant found that Ganesh had died due to stab injury on his left armpit. During the investigation and from the statements of eye witnesses, it was transpired that the present appellant in his scuffle with Ganesh, took out knife and inflicted its blow in the armpit near back of Ganesh. As such, the concerned police station, Gandhi Chowk, Latur, registered crime against the present appellant and other two co-accused.

4. Learned counsel for the appellant submits that deceased Ganesh had fatal injury on account of motorcycle accident and there

was no involvement of the present appellant as such in this crime. According to him, the investigation has been completed and charge sheet is also filed and therefore, considering the young age of the appellant, he may be released on bail by imposing suitable conditions.

5. On the contrary, learned APP strongly opposed and submits that though the charge sheet in the present crime is filed but if the appellant is released on bail, he may pressurize witnesses of the prosecution. Further, the learned APP pointed out that there is material on record in the form of statements of eye witnesses, which indicates direct involvement of the present appellant in the crime. Further, there are criminal antecedents to the credit of present appellant and therefore, if he is released on bail, possibility of pressurizing prosecution witnesses and tampering of evidence, cannot be ruled out.

6. Learned counsel for respondent no.2, who is the original informant, also reiterated the submissions made by the learned APP.

7. Heard rival submissions and also perused the entire record along with charge sheet. It is extremely important to note that during the investigation it has been transpired that there was scuffle between the present appellant and deceased Ganesh and during the

same, the present appellant took out knife, which he had already procured before going to the spot of incident from his friend Nihal Tamboli. Further, it is also found that before going to the spot of incident, the appellant had abused deceased Ganesh on mobile phone. Further, there are two eye witnesses namely Balaji and Alkesh, who had witnessed the actual incident of stabbing Ganesh at the hands of the present appellant. As such, the submission made by the learned counsel for the appellant that Ganesh sustained the fatal injury due to motorcycle accident, appears ridiculous. Even post-mortem report indicates the cause of death of Ganesh as hemorrhagic shock due to stab wound. Thus, considering all these facts, there appears prima facie involvement of the present appellant in the crime and therefore, if he is released on bail, possibility of pressurizing of prosecution witnesses at his hands, cannot be ruled out. Therefore, we are not inclined to release the appellant on bail in connection with the aforesaid crime. In the result, the present appeal stands dismissed and accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-