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

911 BAIL APPLICATION NO.1333 OF 2021
WITH
APPLN/2897/2021 IN BA/1333/2021

VILAS ANNA MUNDE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Salunke Sudarshan J
Mr. VM Kagane, APP for Respondent-State;
Mr. AM Karad, Adv. To assist APP

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 9th December, 2021

PER COURT :-

1. The application moved to assist learned APP is allowed and disposed of.

2. Present application has been filed under section 439 of Cr.P.C. The Applicant is original accused No.1, arrested in CR No.328/2020 dated 18.12.2020, registered with Dharur police station, District Beed, for the offences punishable under sections 302, 307, 325, 323, 143, 147, 148, 149, 504, 506 of IPC and under Section 4/25 of Indian Arms Act.

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3. It has been vehemently submitted on behalf of the applicant that as per the FIR, which has been lodged by one of the injured, it is stated that the present applicant had made deceased Maluram to lie on the ground and thereafter assaulted him by an iron rod. He further states that when he went to rescue father, he was assaulted by co-accused – Umesh with the help of a sword on his head. The informant had seen co-accused Anna Sampati Mundhe (now deceased) was assaulting deceased Maluram by means of stone. At the outset, this FIR has been lodged on 17.12.2020 in respect of the incident that had taken place on 15.12.2020. There is inordinate delay in lodging the FIR which was then filed under Section 307 of IPC. However, thereafter Maluram expired on 21.12.2020 and Section 302 of IPC came to be added. Now, the investigation is over and charge sheet is filed and, therefore, further physical custody of the applicant is not required for the purpose of investigation.

4. In respect of the same incident, the applicant had filed an FIR with the same police

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station bearing CR No.326/2020 on 16.12.2020 for the offences punishable under Sections 324, 323, 504, 506 read with 34 of IPC. The applicant had given reason of belated approaching to the police station. As per the prosecution story, the incident had seen by family members of the deceased and the informant. However, nobody had tried to inform to police prior to 16.12.2020. The post mortem report of Maluram would show that he had sustained eight injuries described in para No.17 and cause of death has been given as Head injury (unnatural). Even if we consider the evidence on record; yet it cannot be said that present applicant is an author of the injury to the head. The statements of the relatives of the deceased and the informant would show corroboration, which is bound to be. Reading of both the FIRs together would show that, in fact, the informant and his family membrs were agressors. Now, the discovery of iron rod and other weapons allegedly used, has been done at the instance of the present applicant. But, the author of the fatal blows to the head of deceased Maluram were by Anna. Anna was arrested on 22.12.2020 and he was in MCR till 24.12.2021. Thereafter, while in MCR,

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he expired on 26.1.2021. Therefore, the applicant deserves to be released on bail.

5. Per contra, learned APP, assisted by learned Advocate Mr. Karad, for the informant, submitted that though the informant and other witnesses have not stated in clear terms as to which part of the body of Maluram received the blow given by the applicant with the help of iron rod, but that has been disclosed by witness Savita, who has specifically stated that the present applicant had given blow by means of iron rod on the head of Maluram, after Maluram was made lie on the ground. There is ample evidence against the present applicant as the said injury is co-relative to the injuries noted on the person of the deceased in column No.17 of pm report. The Injury Certificates of the other witnesses would also show that they were also assaulted by the accused and his family members. Explanation regarding delay in lodging the FIR would be given at the time of evidence. Therefore, when there is strong evidence against the applicant, no leniency be shown to him.

6. At the outset, when charge sheet is filed it can be presumed that further physical custody of the applicant is not required for the purpose of investigation. The contents of the charge sheet are, therefore, required to be considered. As per the FIR lodged by the injured – Ashok, the incident had taken place around 8.00 to 8.30 pm on 15.12.2020. He states that when he was along with his family members in the house, at that time, present applicant, along with other persons, came in front of his house, who were already armed with sword, iron rod, sticks etc. Present applicant called the informant and started asking as to why he has lodged case in respect of kidnapping at Sangola District Solapur. He then started asking the informant to take back that case and started giving threats to kill. When Maluram tried to give advice to the applicant, the applicant instigated the persons, who had come along with him. The applicant then gave blow of iron rod to Maluram after he was made to lie on the ground. The informant was assaulted by sword on his head by Umesh. He also states that accused Anna Sampati Mundhe, assaulted Maluram with the stone. He has

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also given account as to what other accused persons done with other persons who were present there. He tried to contend that since he had also received severe injuries on the vital part and were taken to the hospitals at different places, he could lodge report only on 17.12.2020. Whether the said explanation of delay is reasonable or not, will have to be considered by the Trial Court. It also appears from the documents, which have been filed that the applicant had lodged the FIR on 16.12.2020 against the informant – Ashok, his father Maluram, mother Mahananda and his wife Kavita. It is stated by this applicant that when he was proceeding from the road, which was in front of the house of Maluram, on his motorcycle, he was interrupted and then they were assaulted. His mother and elder son had come to rescue him, however, they were also assaulted. It is to be noted that for the said incident dated 15.12.2020, the present applicant has lodged report on 16.12.2020 around 3.41 am. Only fact will have to be taken note of that there is a cross-complaint.

7. The charge sheet would give further fact that accused – Anna Sampati Mundhe expired on 26.1.2021. As regards role allegedly played by the present applicant is concerned, the other witnesses are contending that the applicant had assaulted the deceased Maluram with iron rod, however, they have not explained as to which part of body of Maluram had received the blow. Except witness Savita, whose statement has been recorded on 18.12.2020, i.e. two days after the FIR was lodged, which was prior to death of Maluram, whether sole testimony of Savita in respect of the said point, i.e. part of the body of Maluram, which received the blow, can be considered, would be part of appreciation of evidence. But the fact remains that the other eye-witnesses are not giving those details. If we consider the PM report, especially column No.17 thereof, injury No.1 is described as abrasion - size 5 cm X 2 cm on right parietal region of head; 10 cm supraorbital ridge; 15 cm from right mastoid process, brownish scab seen. Second injury is contusion to place over right eye. Third is contusion on lateral aspect of right elbow. Injury Nos.4, 5 are to the right and left legs. 6th

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injury is back to shoulder and injury Nos.7 and 8 are therapeutic injection. Therefore, it appears that there was only one abrasion, which was on the right parietal region of the head. It was the surface injury. As regards column No. 19 is concerned, which is in respect of internal examination. It showed underscalp hematoma and there was non displaced linear fracture to the skull. Cause of death has been stated to be head injury which is of course stated to be unnatural. As of today, it appears that the weapons, those have been used, were seized, but they were not sent to the Medical Office to get further opinion from the doctor. What has been discovered by the applicant is, the sword (which as per the prosecution story, he has not used it); iron road (which as per the prosecution story, it has been used by present applicant) and three stones (as per the prosecution story the applicant has not raised them). Therefore, taking into consideration the fact that pm report shows only one head injury and the spot panchanama shows that three stones have been seized of different shapes of which further dimensions have not been given and the

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statements of the witnesses say that co-accused deceased Anna Mundhe, was seen assaulting deceased Maluram with the stone on his head, case is made out to release the present applicant on bail. Hence, following order is passed, -

ORDER

- i. The application stands allowed;
- ii. The applicant be released on bail in connection with CR No.328/2020 dated 18.12.2020, registered with Dharur police station, District Beed, for the offences punishable under sections 302, 307, 325, 323, 143, 147, 148, 149, 504, 506 of IPC and under Section 4/25 of Indian Arms Act, on PR bond of Rs.1,00,000/-(Rupees one lakh) with one solvent surety in the like amount;
- iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.
- iv. The applicant shall not enter in Dharur taluka Dist. Beed, till conclusion of the trial.

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v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give his complete address of the place of residence where he intends to reside along with mobile number till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV