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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.249 OF 2020**

Prashant Nagappa Pawar

.. Applicant

vs.

The State of Maharashtra

.. Respondent

Mr. Umesh R. Mankapure for the Petitioner.

Smt. Veera Shinde, APP for the State.

Mr. Kakaso Patil, API, Vishrambag Police Station present.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 6, 2021

P.C.

Heard learned counsel for the parties.

2. This is an application for bail under Section 439 of the Code of Criminal Procedure. The Applicant was arrested on 15.07.2016 along with other accused in connection with C.R. No.112 of 2016 registered with Vishrambag Police Station, Sangli for the offences punishable under Sections 302, 307, 120(B), 143, 147, 148, 149, 323, 504 of Indian Penal Code ('IPC' for short) and under Section 135 of the Maharashtra Police Act. There was a proposal to prosecute the Applicant under the provisions of Maharashtra Control of Organized Crime Act, 1999 ('MCOCA' for short) and the sanction has been granted.

3. It is the case of the prosecution that on 04.07.2016, Devendra Ramavva Kamble lodged a report at the police station,

alleging therein that he and his brother ply auto-rickshaw in the city of Sangli. It is alleged that his brother-Ravindra Kamble had trifling quarrel with Durgesh Nagappa Pawar and Prashant Nagappa Pawar few days prior to the incident. On 04.07.2016 when they were at the rickshaw stand, Durgesh had called upon Ravindra and threw chilly powder in his eyes. Prashant then assaulted Ravindra with a stone on his forehead. In the altercation that followed, even Macchindra Mane was assaulted by the assailants with fists and kick blows. Ravindra had sustained bleeding injury on his head and therefore the first informant and his brother-in-law Macchindra Mane had rushed him to the civil hospital, Sangli. He was declared dead on admission.

4. It is the contention of Mr. Mankapure, learned counsel appearing on behalf of the Applicant that the MCOCA has been wrongly applied in the present case. It is his contention that for an earlier offence which was registered under Sections 307, 324 and 147 of the IPC against the Applicant, the Applicant has been acquitted and therefore there are no antecedents against the Applicant. Moreover, when it is the case of the prosecution that there are 10 assailants, granting such sanction only in respect of four of the assailants, which includes the Applicant, is completely unsustainable.

5. It is further submitted that it is only on account of enmity between two groups that the Applicant is falsely implicated.

Learned counsel submitted that the co-accused Maruti Muttappa Pawar, Amol Gangappa Kunchikorvi and Papya @ Rakesh Shankar Dudhal have been granted bail by this Court by an order dated 16.02.2018 and therefore on the principle of parity even the Applicant is entitled to be released on bail.

6. In my opinion, this is not a fit case to grant bail even on the consideration of the materials relating to the registering of the present offence under Section 302 of the IPC. The complainant Devendra Kamble is an eye witness to the incident. Four other eye witnesses, Macchindra Mane, Raju Golar, Shital Beswade and Dattatraya Bhosale have stated that the Applicant and Durgesh are the authors of fatal injuries sustained by deceased Ravindra. Macchindra Mane is himself an injured witness. The post-mortem notes, Column No.17 shows that there was depressed fracture to the forehead. All injuries were ante-mortem. The cause of death was intra-cranial haemorrhage with fracture of skull bone due to head injury. In this view of the matter, the Applicant does not deserve to be released on bail.

7. So far as the reliance placed by the learned counsel on the order dated 16.02.2018 granting bail to other co-accused are concerned, the same was on the footing that the Applicants therein had assaulted Macchindra Mane who sustained a simple injury. Even the order records that all the statements would show that Durgesh and Prashant was the authors of fatal injuries sustained by deceased Ravindra.

8. It is then contended by learned counsel that the FIR was registered as far back on 04.07.2016 and since then the Applicant is in custody. A request is made for expediting the trial.

9. Considering that the Applicant is in custody for more than five years, the trial Court is requested to expedite the trial.

10. The Application stands rejected.

(M.S.KARNIK, J.)