

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 366 OF 2021

Appaso Aawaba Mohite	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. R. V. Bansode for Applicant.
Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 165 of 2020 registered with Mhaswad police station, Satara, under sections 307, 326, 324, 323, 504, 506, 143, 144, 147, 148, 188, 269 r/w. 149 of the Indian Penal Code (for short 'IPC'), under section 51 of Disaster Management Act and under section 11 of Maharashtra Covid-19 Rules 2020. The applicant was arrested on 26/07/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Bansode, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The prosecution story is reflected in F.I.R. itself lodged by one Vitthal Jagdale. He has stated that, there was a dispute regarding land between informant's family and his uncle's family at Mankarnwadi, Tal. Maan, Dist. Satara. On 25/07/2020, at about 7:00p.m. the informant had accosted one Aakash Mohite and asked him as to why Aakash's father had abused the informant. Aakash then ran towards his house. The informant followed him. He was stopped by Aakash's uncles Balku, Narayan, Appaso, Lalaso and present applicant. They were accompanied by others from their family. Some of them were carrying axe and others were carrying sticks. There is no specific weapon attributed to the present applicant in the F.I.R. Aakash started assaulting the informant on his legs. He started shouting. The informant's father Mahadev, brother Dashrath and sons Amol and Sunil came there for his rescue. There was assault on these people. Mahadev suffered head injury. After some time, the Police-Patil and others

reached there. The injured were removed to the hospital. The injured Mahadev succumbed to his injuries on 04/08/2020. Initially, the F.I.R. was lodged on 26/07/2020 mainly under section 307 r/w. 149 of IPC, but subsequently, after the death of Mahadev, section 302 of IPC was added.

4. Learned counsel for the applicant submitted that the applicant is not attributed any role or any weapon. His name is mentioned in general just to see to it that all the male members of the applicant's family are behind bars. There is no recovery of weapon at his instance. There is no incriminating circumstance against him. He submitted that, there is a cross F.I.R. lodged by Lalaso mainly under section 307 of IPC against the informant's group. He submitted that, thus, there is a cross F.I.R. and informant Vitthal is not telling true story.

5. Learned APP opposed this application. She submitted that, section 149 of IPC is also applied, therefore, common object is made out.

6. I have considered these submissions. The deceased had died after about 8 days of the incident. The cause of death was mentioned as 'death due to head injury'. There were two injuries on the head. The narration in the F.I.R. shows that, initially the informant was assaulted on his legs, therefore, common object of the assembly, at least initially was not to cause death or even grievous injury to any vital part. Subsequently, the deceased in this case Mahadev and others came on the scene to help the informant Vitthal and in further assault Mahadev suffered head injury which resulted in his death. As rightly submitted by the learned counsel for the applicant, there is no role of assault attributed to the present applicant. Even any weapon is not attributed to him. There are indications that the informant's group was aggressor as the informant had followed Aakash to his house where that incident has taken place. There is already a cross F.I.R. The applicant is 71 years of age. The investigation is over and the charge-sheet is already filed, therefore, no purpose will be served by keeping the applicant in detention as an under trial prisoner. He deserves to be released on bail.

7. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 165 of 2020 registered with Mhaswad police station, Satara, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)