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

BAIL APPLICATION NO. 1794 OF 2021

Sagar Kumar Indra ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Aniket Nikam i/b. Mr. Amit Icham for the Applicant.

Mrs. P.P.Shinde, APP for the Respondent -State.

.....

CORAM : V.G.BISHT, J.

RESERVED ON : 26TH NOVEMBER, 2021

PRONOUNCED ON : 13TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 801 of 2019 registered with Hadapsar Police Station, Pune for offences punishable under Sections 302, 120B, 143, 144, 147, 148, 149 and 506 (2) of the Indian Penal Code (the IPC), Sections 3 (25) and 4 (25) of the Arms Act and Sections 3 and 7 of the Criminal Law Amendment Act and Section 37 (1) read with 135 of the Maharashtra Police Act.

2. It is the case of prosecution that on 20th July, 2019, while co-accused Sanjusingh Kalyani was beating one Ganesh, informant's brother attempted to intervene resulting into a quarrel between the two. At that time, co-accused Tejabsingh @ Tejab Kalyani threatened informant that he would not spare his brother.

3. Prosecution next contends that on 13th August, 2019 at about 6.30 p.m., when informant's brother, namely, Mayur and his friends were standing on Ganganagar Main Road Chowk, co-accused Tejabsingh accompanied with Omshri Bhandari, Rohitsingh Kalyani and Sanjusingh Kalyani arrived at the spot and started giving abuses to Mayur on account of the dispute which had taken place earlier and also started beating Mayur. At that point of time, when informant and one Pancha Swami (deceased) tried to persuade those accused, it is alleged, Tejabsingh @ Tejab Kalyani took out a revolver and fired at Pancha Swami and thereby injured him. Deceased succumbed to the injuries on 14th August, 2019. The informant accordingly lodged the report.

4. Mr. Nikam, learned Counsel for the applicant, is claiming parity on the ground that other co-accused have already been released on bail by this Court. Even otherwise, according to learned Counsel, the applicant is not named in the FIR. He also invited my attention to the statements of various witnesses, who also do not name the applicant. Only incriminating evidence against the applicant is memorandum panchnama and nothing else. For all these reasons, the applicant deserves to be enlarged on bail, argued learned Counsel.

5. Mrs. Shinde, learned APP, on the other hand, submits that there was recovery of vehicle used in the offence, a sickle and two live cartridges at the instance of applicant. There are antecedents against the applicant as well. In such circumstances, the application deserves to be rejected.

6. Perused investigation papers. Perusal of the FIR would show that neither the name of applicant is revealed nor any role is attributed to him. I have also gone through the

statements of witnesses, namely, Mayur Vijay Gunjal, injured, Nikhil Vasudeo Khare, Aakash @ Sunny Prakash Gavali and Aditya Santosh Ingole. None of these witnesses say the involvement of the applicant in the offence.

7. The only evidence appears to be against the applicant is memorandum panchnama recorded on 4th October, 2019 pursuant to which, a four wheeler, a sickle and two live cartridges came to be recovered from the applicant. But it is seen from the record that some recovery was also made at the instance of co-accused Sagar Mohan Chaugule, namely, lokhandi koyta and two wheeler but that co-accused is already on bail.

8. Having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. The so called antecedents which are taken note of by the learned trial Court will not come in the way of applicant qua his role in the present crime. Hence the following order:

ORDER

(i) Applicant- Sagar Kumar Indra shall be released on bail in C.R. No. 801 of 2019 registered with Hadapsar Police Station, Pune on his executing P.R. Bond in the sum of Rs. 15,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)