

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

BAIL APPLICATION NO. 2915 OF 2021

Yogesh @ Bala Balu Shendkar ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Piyush Toshnival i/b. Mr. Harshad Patil for the Applicant.
Mr. A.A.Palkar, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.
RESERVED ON : 16TH NOVEMBER, 2021
PRONOUNCED ON : 23RD NOVEMBER, , 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 0657 of 2018 registered with Bharti Vidyapeeth Police Station, District-Pune for offences punishable under Sections 302, 143, 147, 148 and 149 of the Indian Penal Code (the IPC) and under Section 4 (25) of the Arms Act and Sections 37 (1) (3) and 135 of the Maharashtra Police Act.

2. According to prosecution, a month prior to incident, a quarrel had taken place between accused Ganesh Gaikwad and Sandip Gejage. On 6th December, 2018 at about 10.15 pm., in order to settle the quarrel, informant's cousin Vinayak Pawar (since deceased) had summoned accused Ganesh Gaikwad. Accordingly, accused Ganesh Gaikwad along with other accused, namely, Vishal Kamble, Prakash Renuse, Bala Shendkar (applicant) and Gaurav @ Gogya Bhamare came. The prosecution alleges that all the accused by keeping grudge in their mind of earlier quarrel assaulted deceased and his friend Sandip Gejge. Accused Vishal Kamble gave blows of knife on the chest of deceased while applicant and co-accused Prakash Renuse used sickle and gave blows on the right side of waist, left wrist, the right side of elbow and on the back. Accused Ganesh Gaikwad and Gogya Bhamare used broken grinding stone to assault on the back of the deceased. Informant accordingly lodged the report.

3. Mr.Toshnival, learned Counsel for the applicant, submits that it is alleged that the applicant had used sickle while

assaulting deceased, however, there is no recovery of sickle. Co-accused are on bail. Test identification parade has also been carried out in which the applicant is duly identified. No purpose would be served by keeping the applicant behind the bars. Hence, the applicant be released on bail, urged learned Counsel.

4. Mr. Palkar, learned APP, vehemently opposes the submission by contending that the ground of parity is not available to the applicant inasmuch as his role differs from the other accused, who are released on bail. The applicant had used sickle and the postmortem report corroborates the injuries sustained by deceased. There being no merit in the application, the same is liable to be rejected.

5. Perused investigation papers and the statements of witnesses and as also the postmortem report.

6. The statement of Sandip Gejage, who on the day of incident, was accompanying the deceased clearly states in consonance with the contents of FIR. As far as the present applicant is concerned, according to this witness, the applicant had used sickle while assaulting deceased and had given a blow on the right side of waist. Similar is the statements of Vikas Tanaji Dhumal and Somnath Dattatray Gade.

7. Thus, there is *prima facie* involvement of the applicant in the murderous assault on the person of deceased. His cause of death as is seen from the postmortem report is shock and hemorrhage due to stab injury over chest with multiple chop injuries over body associated with head injury.

8. Needless to say, the applicant had used sickle and had caused chop injuries by means of sickle. The submission of learned Counsel that there is no recovery of sickle will not affect the case of prosecution inasmuch as there is *prima facie*

evidence of the role played by applicant and as also the deadly weapon used by him while committing the offence.

9. In view of above, in my considered opinion, there is overwhelming evidence which dis-entitles the applicant from bail and, therefore, I am not inclined to grant bail. Hence, the following order :

ORDER

The Bail Application is rejected.

(V.G.BISHT, J.)

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SADANAND
BAMNE

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by TRUPTI
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