

**.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2403 OF 2019**

Niranjan @ Bhavdya Bhimrao Kalbhor .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr. Aniket Nikam a/w Piyush Toshnival a/w Amit Icham i/b.
Mr. Vivek Arote- for the Applicant.

Mr. S. V. Gavand, APP for the State.

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**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 21st OCTOBER, 2021**

P.C:-

1. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 filed by the aforesaid Applicant, who is facing trial under MCOC Special Case No. 20 of 2018, pending before the Special Judge, Pune for the offences under Sections 143, 147, 148, 149, 302, 323 IPC, and Section 4(25) of the Arms Act and Section 37(1) r/w. 135 of Maharashtra Police Act and under Sections 3(1)(i), 3(2), 3(4) of the MCOC Act.

2. Heard, Shri Aniket Nikam, learned counsel for the Applicant and Shri S. V. Gavand learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The charge against the Applicant is that on 20.11.2017 the Applicant along with other co-accused formed an unlawful assembly, armed with deadly weapons, and in furtherance of common object committed murder of Aniket Jadhav. The First Informant-Suraj Santosh Das has alleged that on 20.11.2017 at about 22.45 p.m, while he and Aniket Jadhav, were proceeding towards Aakurdi Gaonthan, on a motor cycle driven by Aniket Jadhav, the Applicant and co-accused Sonya Kalbhor, Akshay Kalbhor, Datta Kalbhor and others came in front of their motorcycle, armed with weapons such as swords and koytas. Sonya Kalbhor kicked the motor cycle. When Aniket fell from the motor cycle, they caught hold of Aniket and Sonya Kalbhor inflicted a blow of Koyta on the head of Aniket, whereas Hanumant Shinde and Akshay Kalbhor inflicted blows with

swords and others assaulted with hands, kicks and stones cause of death was due to head injury.

5. The material on record indicates that Aniket had succumbed to the injuries sustained in the said incident. The Post Mortem report also reveals that the cause of death was due to head injury and thus homicidal. The first informant-Suraj Das, and Namrata Torane who have allegedly witnessed the incident have not named the applicant either in First Information Report or in the statement under Section 161 of the Code of Criminal Procedure, nor have they identified the Applicant in the test identification parade.

6. The only material against the Applicant is the statement of Akash Dhumal. The statement of this witness was recorded on 22/02/2018, almost three months after the date of incident, wherein he has stated that the Applicant and co-accused Akshay Kalbhor had caught hold of deceased Aniket, while the other co-accused had assaulted him by means of weapons, kicks and

blows. In his statement under Section 164 of Cr.P.C., recorded on 13.04.2018, it is claimed that the Applicant and co-accused Tejas Mandlik had caught hold of Aniket Jadhav. Prima facie, there is a delay in recording the statements under Section 161 and 164 of the Cr.P.C. No explanation is given in the affidavit-in-reply for the delay in recording the statements. Moreover, prima facie, there is no consistency in the statements made under Sections 161 and 164 of the Code of Criminal Procedure, 1973.

7. It is also alleged that Applicant and co-accused had made confessional statements. However, it is not in dispute that the Applicant and the co-accused have retracted their confession when produced before the Magistrate. Thus, the only material against the Applicant is that he had caught hold of the deceased Aniket Jadhav. There is nothing on record to indicate that the Applicant was armed with any weapons or that he had assaulted the deceased.

8. Considering the above facts, so also considering the nature of the accusation leveled against the Applicant and the the evidence in support thereof, in my considered view, this is a fit case for grant of bail. Hence, the Bail Application is allowed on following terms and conditions:-

- (i) The Applicant who is arrested in Crime No. 654/2017 registered with Nigdi Police Station, Pune and facing trial in Special Case No. 20 of 2018 is ordered to be released on bail on furnishing PR bond in the sum of Rs. 40,000/- (Rupees Forty Thousand Only) with one or two sureties in the like amount;
- (ii) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of

the trial and attend the trial Court on all dates,
unless exempted.

7. The Bail Application stands disposed of.

PRASANNA P
SALGAONKAR Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2021.10.30
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(SMT. ANUJA PRABHUDESSAI, J.)