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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.3217 OF 2019**

Prathmesh Vishwanath Shetty .. Applicant  
Versus  
The State of Maharashtra .. Respondent

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Mr.Hrishikesh Mundargi for the Applicant.

Mrs.Veera Shinde, APP for the State.

PSI Rajan Dhuri attached to Sakinaka Police Station present.

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**CORAM: BHARATI DANGRE, J.**  
**DATED : 19<sup>th</sup> MARCH, 2021**

**P.C:-**

1. The applicant, who came to be charge-sheeted under Sections 141, 142, 143, 144, 146, 147, 148, 149, 363, 364, 302, 109, 114, 120B of the Indian Penal Code ("IPC"), seeks his release on bail by the present application. Apart from his complacency in the said crime, the applicant also relied upon the release on bail of the co-accused and claim parity in terms of the orders passed by this Court in Criminal Bail Application No.1270 of 2018 and Criminal Bail Application No.653 of 2019 qua the co-accused Namdev, Vinit and Swapnil. Fairly it is submitted that another co-accused, namely, Nitin Dhoble was, however, denied parity in Criminal Bail Application No.1887 of 2019.

2. Heard learned counsel Mr.Hrishikesh Mundargi for the applicant and learned APP Mrs.Veera Shinde for the State.

3. On 7/11/2017, an FIR came to be lodged with Sakinaka Police Station at the instance of Smt.Sunita Landge, mother of the deceased Akash Landge, thereby invoking Sections 363, 141, 143, 149 read with Section 34 of IPC. The said FIR was registered against 10 to 15 unknown persons when the mother of the deceased approached the Police Station on 7/11/2017 and alleged that on the said day, when she was present in the house alongwith Akash, at around 1.45 p.m., her son Akash who opened the door on being knocked and stepped out, did not return in the house. When she made inquiries, she was told by the neighbour that some 10 to 15 persons, who arrived on the bikes and rickshaws, had enticed Akash. She attempted a search in the locality alongwith the neighbours. When Akash was not found, she lodged a missing report. On the next date, Akash was found in an injured state, lying on a road. He was taken to the hospital, where he was declared dead and, therefore, in the earlier complaint, the relevant Sections, including Section 302 came to be inserted and the accused persons are charge-sheeted for all the said Sections.

4. The applicant came to be arrested on 7/11/2017 i.e. on the date of incident itself and since then he is incarcerated.

5. In his submission, Mr.Mundargi state that the star witness of the prosecution is one Aniket and he can be referred to as an eye-witness of the incident. Apart from his statement,

the prosecution case rests on three other statements being of Bhagyawan Shivaji Kavar, Mahesh and Sandesh Dhurandhar. The statement of Aniket, according to Mr.Mundargi, do not inspire confidence on account of the delay, being recorded on 15/3/2018 and this delay in recording the statement and in particular, since he was a close friend of deceased and had witnessed the accused persons assaulting Akash resulting into he becoming unconscious. But, when he came to know that he was murdered and taken to hospital, he fled away to his village and only after the applicant and his accomplice were arrested, returned back to Mumbai. Further, according to Mr.Mundargi, three statements on which the prosecution case is premised, being of Bhagyawan, Mahesh and Sandesh, can be classified as hear-say evidence, which is a weak piece of evidence. On the evidence of the prosecution falling short of credibility and reliability and in the backdrop that the co-accused have been released on bail, Mr. Mundargi seeks a relief of grant of bail.

6. With the assistance of the learned counsel appearing for the respective parties, I have perused the charge-sheet as well as the orders passed in cases of co-accused, either releasing or refusing grant of bail. The charge-sheet comprises of inquest panchanama and the two panchas, who have signed on the panchanama are one Mahesh Achrekar and Bhagyawan Kavar. The panchanama prepared on 7/11/2017 bears the signatures of the said persons as panchas. It is these panchas, whose statements are recorded as witnesses to the incident of assault on deceased.

The statement of Bhagyawan Kavar recorded on

10/11/2017 i.e. after 4 days of the incident is compiled in the charge-sheet and the case of the prosecution emerge from the said statement. On the date of incident i.e. on 7/11/2017, when he returned home at around 12.30 a.m. to 1.00 a.m. and was chit-chatting with his friend Somu, Akash (the deceased) arrived and while chatting, he informed that he had pulled down the banner erected for extending birthday wishes to Bhau Shetty with the help of Aki and Mahesh and at that time, Barkya Shetty (applicant) and his boys had chased him and he was being searched by them. At that time, Bhagyawan noted that 10 to 15 persons on the motorcycles were approaching them and he cautioned Akash and all of them entered into a lane. The boys, who arrived as a gang of 15 to 20, included the applicant, Dhoble, Fatya, Pasoda, Aditya, Shubham and others. Akash's friend Anil was also with them and he had an handkerchief tied on his face and he was captured by them. All the accused persons chased Akash and being scared, Bhagyawan and Somu stood in one corner of the playground. Remaining portion of his statement is based on what he heard i.e. Akash was being carried by the applicant and Fatya in 'Shivgarjana ground'. He overheard the conversation of 8 to 10 people, who arrived there, that Akash was taken to the ground and they were all called there and then they sat on their motorcycles and left the spot. He went in search of Akash and inquired with two boys on his way. At that time, the applicant arrived at the spot with bamboo and started assaulting. Dhoble and others started assaulting him and Somu, however, they managed to escape. He then approached the Rajawadi Hospital in the morning, since he

had pain in the hand and he was informed that Akash is no more. He informed to the complainant i.e. mother of Akash that the applicant, Dhoble and his accomplice had enticed her son and murdered him. He had also stated that he took treatment in the hospital.

When asked, whether the charge-sheet contains any injury certificate of Bhagyawan, learned APP Mrs.Shinde states that there is no injury certificate.

7. Another statement in charge-sheet is of one Mahesh recorded on 4/12/2017. On the date of incident, he alongwith the deceased and his friends were consuming alcohol in Datta Nagar ground at 12 o'clock, they heard the firecrackers being burnt near Saibaba Mandir and out of curiosity, they approached that way. Akash asked them to pull down the poster mounted on a pole extending birthday wishes to Bhau Shetty and they had acted on his instructions. This act annoyed the applicant, who is brother of Bhau Shetty and he chased the persons, who had pulled down the poster and hurled abuses at them. On noticing that 8 to 10 motorcycles are following, Akash tipped them to run away. They reached their respective house and Mahesh also reached his house and was watching television. At about 1.30 to 2.00 a.m. he heard loud voices and he came out in the gallery. He saw Akash running from the lane and he was being chased by the applicant, Nitin Dhoble and 15 to 20 persons. Bhagyawan was also standing in the lane and when inquired, Bhagyawan informed him that the applicant, Nitin Dhoble and his accomplices are chasing Akash to thrash him. He, therefore,

entered the house.

Another statement compiled in the charge-sheet is of one Sandesh, who speak in sync with Bhagyawan.

8. The postmortem report reveals multiple injuries on the deceased in column No.17 and the cause of death is opined as 'Hemorrhage and shock due to multiple injuries'. The applicant came to be arrested in the said C.R. on 7/11/2017 alongwith other accused persons.

9. On an application filed by Namdev and Vinit, who are alleged to have been present at the time of incident as per the version of the witnesses, including Aniket, who has categorically stated that the applicant had assaulted deceased by means of bamboo and other accused were constantly beating Akash by means of bamboos. On a similar role attributed to Namedev and Vinit, by order dated 3/9/2018 (P.D.Naik, J.) recorded as under :

"5. I have perused the statement of the witnesses. Statement of Bhagyawan does not indicate that the applicants were the person who had assaulted the deceased by Bamboo stick. Reference of the applicants is being made in his statement as a person who had stated that the deceased is being taken to the place of assault. The said witness had attributed overt act of assault to the other accused and not to the applicant. The statement of two other witnesses are similar. The statement of Aniket however refers to assault by the

applicants with Bamboo stick however, the said statement was recorded on 15<sup>th</sup> March, 2018 and there is no reason as to why the statement of the said witnesses was recorded belatedly. The statement runs counter to the statement of other three witnesses referred herein above.”

10. Further, while granting bail to Swapnil Fatkale, who claimed parity with Namdev and Vinit, this Court (A.S.Gadkari, J.) observed as under :

“4. Perusal of the chargesheet would indicate that, the name of the applicant first emerged on record in the statement of Aniket Jaiswal recorded on 15.3.2018 i.e. after a gap of about four months from the date of incident. In the statement of Aniket Jaiswal the role attributed to the applicant is of assault with bamboo stick. Two other co-accused namely Namdeo S. Dighe and Vinit V. Korade have been attributed with similar role. In view thereof, the applicant is entitled to be released on bail on the ground of parity”.

11. I have also taken note of the order passed by this Court (Revati Mohite Dere, J.) in case of Nitin Dhoble whereby the bail is rejected on the ground that after assaulting the deceased, the applicant came to the spot and assaulted Sandesh and Pawan and that he has an antecedent as a crime is registered against him. Expressing that there is possibility of the applicant tampering with the witnesses, the application

came to be rejected.

12. As far as the present applicant is concerned, though Bhagyawant stated that the applicant returned with bamboo and charged Bhagyawan and his friends Pawan and Somu and that the applicant and his two accomplices started assaulting Pawan and Somu, the charge-sheet does not reveal any material in form of any injury certificate of Bhagyawan or that he was taken to the hospital on sustaining some injuries. In light of the aforesaid circumstances, taking *prima facie* view of the matter and on ascertaining credibility of the witnesses, *prima facie*, I see no reason why the applicant is not entitled for a similar treatment to that of Namdev and Vinit. Learned APP Ms.Shinde has argued that the applicant was most violent and abusive since it was his brother's posters which were pulled down by the deceased and his team, I do not find any material in the charge-sheet to reflect upon the said submission since the witnesses have testified that all the accused persons together assaulted the deceased by bamboo stick and he sustained multiple injuries. The role attributed to each of the accused and the gravity will have to be tested at the time of trial. Since the investigation is now complete and the learned APP has not expressed any possibility that the applicant being fleeing the course of justice or in any way tamper with the prosecution evidence, in absence of any antecedent to his credit, in my considered opinion, he is entitled to be enlarged on bail on parity with the three co-accused, subject to the following conditions.

**: ORDER :**

- (a) Application is allowed.
- (b) Applicant - Prathmesh Vishwanath Shetty shall be released on bail in C.R.No.653 of 2017 registered with Sakinaka Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer
- (d) The applicant shall not tamper with the prosecution evidence.
- (e) The applicant shall not enter the jurisdiction of Sakinaka Police Station till the conclusion of the trial.
- (f) The applicant shall mark his attendance before the learned Judge, Sessions Court at Dindoshi to whom the case is committed, once in every month.

**SMT. BHARATI DANGRE, J**