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

CRIMINAL BAIL APPLICATION NO.3455 OF 2019

Mayur alias Mahesh Ramesh Borade	...Applicant
Versus	
State of Maharashtra	...Respondent

***WITH
CRIMINAL BAIL APPLICATION NO.524 OF 2020***

Balkrishna Laxman Gaikwad	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Satyam H. Nimbalkar, for the Applicant in BA/3455/2019.

Mr Aniket U. Nikam i/b Mr. Vivek N. Arote, for the Applicant in BA/524/2020.

Ms. S. V. Sonawane, A.P.P for the Respondent – State.

API – Rajesh J. Mane, Saswad Police Station, Pune Rural, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th MARCH, 2021

P.C. :

1. Pursuant to the administrative order dated 22nd February 2021 passed by the Hon'ble the Chief Justice, the aforesaid applications have been placed before this Court.

2. Heard learned counsel for the parties.

3. By these applications, the Applicants seek their enlargement on bail in connection with C.R.No.281 of 2018 registered with the Saswad Police Station, Pune, for the alleged offences punishable under Sections 302, 307, 143, 145, 147, 148 r/w 149 of the Indian Penal Code and under Section 3(25) of the Arms Act.

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4. Mr. Nimbalkar, learned counsel for the applicant seeks bail on the ground of parity as well as on merits. He submits that identically placed co-accused – Aadesh Shivaji Pawar, has been enlarged on bail by this Court (Coram: Sarang V. Kotwal, J.) vide order dated 2nd August 2019, passed in Criminal Bail Application No.1395 of 2019. He submits that the applicant is better placed than co-accused – Mohan Laxman Gaikwad, who has also been enlarged on bail by this Court (Coram:Prakash D. Naik, J.) vide order dated 12th February 2020 passed in Criminal Bail Application No.1511 of 2019. He submits that there are several discrepancies in the statements of the eye-witnesses as well as the complainant recorded under Section 161 Cr.PC and under Section 164 Cr. PC. He submits that eye-witness – Sopan Patne has named the applicant – Mayur alias Mahesh Ramesh Borade in

his 161 statement but has not attributed any role to him, however, in the 164 statement, Sopan has not named the applicant. He submits that eye-witness – Abhijit Dalvi has neither named the applicant in the 161 statement nor in the 164 statement. He submits that another eye-witness – Dattatray Kamthe has named the applicant as being present in his 161 statement, however, has not named him in the 164 statement (the said witness has named co-accused – Mohan Gaikwad and Aadesh Pawar in the 164 statement). He submits that as far as eye-witness – Akshay Limbhore is concerned, he has given a completely different version from what is stated by the complainant and some of the eye-witnesses i.e. that it was the deceased – Santosh Dalvi and his father (complainant) who were the aggressors. Learned counsel relied on the orders passed by this Court enlarging co-accused – Mohan Gaikwad and Aadesh Pawar on bail. He submits that there is no recovery at the instance of the applicant nor the applicant has any antecedents.

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5. Mr. Nikam, learned counsel for the applicant seeks bail on the ground of parity as well as on merits. He submits that the applicant is better placed than co-accused – Mohan Laxman Gaikwad, who has also been enlarged on bail by this Court (Coram:Prakash D. Naik, J.) vide order dated 12th February 2020 passed in Criminal Bail Application No.1511 of 2019.

He submits that in the FIR/complaint, the complainant has not attributed any role of the applicant in the assault on the deceased but has only alleged assault by the said applicant on him (complainant). He submits that the complainant even in his supplementary statement, has not assigned any role to the applicant on deceased – Santosh, however, in the 164 statement, the complainant has alleged that the applicant and co-accused – Mohan Gaikwad assaulted his son – Santosh (deceased). Learned Counsel submits that co-accused – Mohan Gaikwad has been enlarged on bail by this Court (Coram: Prakash D. Naik, J.). As far as eye-witnesses are concerned, he submits that eye-witness – Sopan Patne has named the applicant – Balkrishna Laxman Gaikwad in the 161 statement as well as the 164 statement, however, no specific role has been attributed to the applicant. He submits as far as eye-witness – Abhijit Dalvi is concerned, the said witness has in his 161 statement stated that the applicant threw a stone on the deceased, however, in the 164 statement, no role has been attributed to the applicant. As far as eye-witness – Dattatray Kamthe is concerned, he submits that the said witness in his 161 statement has named the applicant but no role has been assigned to him, whereas in the 164 statement the applicant is alleged to have assaulted deceased – Santosh along with co-accused – Aadesh Pawar with a stone. As far as eye-witness – Akshay Limbhore is concerned, it is submitted that the said witness has stated that

deceased – Santosh was the aggressor. He submits that the said witness has given a completely different version i.e. deceased – Santosh and his father (complainant) were the aggressors, which is completely contrary to what is stated by the complainant in the FIR. He submits that the applicant has no antecedents and that there is no recovery at his instance.

6. Learned APP opposed the applications.

7. Perused the papers. The incident is alleged to have taken place on 31st July 2018. It is the prosecution case that the applicants along with other co-accused formed an unlawful assembly. The reason for assault is stated to be previous enmity between deceased – Santosh on the one hand and Dadaso Katke and Dattatray Katke on the other. It is alleged that due to this enmity, Santosh was called by the co-accused, pursuant to which, Santosh and the complainant went to the said spot. It is alleged that Dadaso Katke, Bharat Gaikwad and Hemant Gaikwad pointed a country-made revolver at Santosh. It is alleged that the complainant snatched the said revolver from the one of the accused, as a result of which, Dattatray Katke, Bharat Gaikwad and Hemant Gaikwad held the complainant and Balu Gaikwad assaulted him with a stone on his head. It is alleged that thereafter, all the accused assaulted them with fist and kick blows. The complainant in

the complaint/FIR has stated that Dadaso Katke and Hemant Gaikwad fired at Santosh, as a result of which he fell down, after which Dipak Bhandwalkar, Mayur (applicant), Akshay Gaikwad and Aadesh Pawar assaulted deceased – Santosh with stones. The complainant lodged an FIR on 1st August 2018. In the history given to the doctor, the complainant has stated that “assault/injury by unknown persons at around 10:00 p.m. in Bhivari, Tal – Purandar, Dist.- Pune on 31st July 2018.” Although in the FIR the complaint is lodged as against 10 persons, in the supplementary statement the complainant has made allegations as against 5 more persons.

8. It is pertinent to note that there are eye-witnesses to the said incident and that the statements of the eye-witnesses are recorded both under Section 161 Cr.PC as well as under Section 164 Cr.PC. As submitted by the learned counsel for the applicants, there are discrepancies in the 161 statements as well as the 164 statements of the witnesses. In fact, one of the eye-witness i.e. Akshay Limbhore has given a completely different version i.e. that the deceased – Santosh and his father (complainant) were the aggressors. It is not in dispute that co-accused – Mohan Gaikwad and Aadesh Pawar as well as Santosh Ghisare, Shivaji Pawar, Shobha Katke and Sanjana Gaikwad have been released on bail by this Court. A perusal of the order dated 2nd August 2019, passed by this Court (Coram: Sarang

V. Kotwal, J.) enlarging co-accused – Aadesh Shivaji Pawar and order dated 12th February 2020 passed by this Court (Coram:Prakash D. Naik, J.) enlarging co-accused – Mohan Laxman Gaikwad, show that the role of the applicants is similar to that of the said co-accused, who have been released on bail. The discrepancies in the statements of the eye-witnesses are elaborated and discussed in the order dated 12th February 2020 passed by this Court (Coram:Prakash D. Naik, J.) enlarging co-accused – Mohan Gaikwad, on bail as well as in the order dated 2nd August 2019 passed by this Court (Coram: Sarang V. Kotwal, J.) enlarging co-accused - Aadesh Pawar. The statements of witnesses Atul Dimble as well as Akshay Limbhore show that they have given a different version than set out by the complainant i.e. it shows that the deceased – Santosh and his father (complainant) were the aggressors. Admittedly, the applicants have no antecedents and there is no recovery of any article/weapon, at their instance.

9. Considering the aforesaid and on the ground of parity, the applications are allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more local sureties in the like amount;
- (ii) The applicants shall attend the concerned police station, on the first Saturday of every month between 10:00 a.m. to 12:00 noon, until further orders;
- (iii) The applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicants to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicants shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of their release;

(vii) If there are two consecutive defaults either in attending the Police Station or if the applicants fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

10. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

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

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.