

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (BA) No. 545 of 2021

(Gajanan S/o Gopal Chavhan ..vs.. State of Maharashtra through P.S.O., P.S. Murtizapur (Gramin),
Tal. Murtizapur, Dist. Akola)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Londhe, Advocate for the applicant
Mrs. K. R. Deshpande, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 12-07-2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant is facing prosecution for offences punishable under Sections 302, 307, 452, 324, 143, 147 and 149 of the Indian Penal Code registered with Murtizapur Gramin Police Station vide Crime 7/2020. The gist of the prosecution case is that on 4-1-2020, the applicant and the co-accused launched an assault on Duryodhan. The motive is a boundary dispute.

3. Duryodhan was shifted to his house in an injured condition. The applicant and the co-accused followed Duryodhan to his house and killed him by means of axe,

sickle and sticks. The family members of Duryodhan were also injured in the incident.

4. The thrust of the submissions canvassed by Mr. Londhe is that co-accused Shrikrushna is granted bail by this Court (Coram : Pushpa V. Ganediwala, J.) vide order dated 18-12-2020 in Criminal Application (BA) 726 of 2020.

5. I have perused the order on which reliance is placed. Apart from the fact that the principle of parity is not an absolute rule which can bind me, on facts, the applicant – accused who is granted bail are not similarly situated.

6. While granting bail to co-accused Shrikrushna, the learned Judge has noted that the role attributed to Shrikrushna and some other accused is limited to assaulting Duryodhan and his family members by means of sticks and that specific role is not attributed.

7. In my considered view, the prosecution need not attribute any specific role since Section 149 of Indian

Penal Code is invoked. *Prima facie* all the accused formed unlawful assembly which went on rampage and every member of the unlawful assembly is responsible irrespective of the role played, for the death of Duryodhan since the assembly acted with a common object. That apart, another learned Single Judge (Coram : Vinay Joshi, J.) has rejected the bail application of co-accused Kamlakar. The only difference between role attributed to accused Kamlakar whose bail is rejected, and the applicant, is Kamlakar used axe and the applicant used a sickle. Be that as it may, as noted, since Section 149 of the Indian Penal Code is invoked, the specific role played or the weapon used or for that matter, the injury is caused pales into insignificance since the unlawful assembly had a common object.

8. The application is dismissed.

JUDGE