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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

945 BAIL APPLICATION NO.265 OF 2022

**SANDIP SHESHRAO SAKHALE
VERSUS
THE STATE OF MAHARASHTRA**

Mr Prashant M. Nagargoje, Advocate for applicant;
Mr A.A. Jagatkar, A.P.P. for respondent

CORAM : S. G. MEHARE, J.

DATE : 29th June, 2022

P.C.

1. By this application under Section 439 of the Code of Criminal Procedure, the applicant seeks bail in C.R. No.145 of 2021, registered with Ajanta Police Station, Aurangabad, for offences punishable under Sections 302, 307, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard the learned Counsel for the applicant and the learned A.P.P. at length.

3. The learned Counsel for the applicant read the first information report which was lodged by the wife of the deceased Digambar. In the first information report the allegations have been leveled against the applicant that he hit on the head of the deceased with an axe, so he fell down and died instantaneously. There are also the allegations

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against the other-accused of beating with timber logs to the other family members of the first informant. The first limb of the argument of the learned Counsel for applicant is that the first informant Sarla was not the eye-witness. He would refer to the statement of one Vishnu Bhimrao Sakhale who has stated that on the day of the incident, at about 5.30 p.m. Sarla asked him a lift to leave her in the field where the incident happened. It is also argued that there was no motive. The false allegations have been made that the applicant was insisting the deceased and his family for a partition of the property. However, the property was already partitioned. He also referred to the statement of the son of the deceased, namely, Dadarao and would submit that he has stated that the deceased was lying in the field. Therefore, there is no evidence of assault at the hands of the applicant. He also referred to the C.A. report and pointed out that the report is negative and no blood was detected. It is a case of single blow, in which no motive can be gathered. The injury on the head of the deceased Digambar was measuring 10 cm X 4 cm. Such injury may not be possible by a stick. There are no antecedents to the discredit of the applicant. The co-accused have already been released by this Court. Therefore, parity may be extended to the applicant. The applicant is languishing in jail since last one year. The applicant is ready to abide by any condition if enlarged on bail.

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4. The learned A.P.P. has strongly opposed the application and contended that besides the deceased, other family members were also assaulted and injured. One of the injured Sagar has categorically stated that the present applicant assaulted the deceased with an axe and he fell down. He also stated that during the assault the other family members were injured. Injured is the best witness. There are ocular witnesses. He also referred to the spot panchnama. He also pointed out that the axe and sickle have been recovered at the instance of the applicant under Section 27 of the Indian Evidence Act. The medical expert has opined that the death was caused due to the head injury. There is apparent overt-act of the applicant. The submission of the learned Counsel for the applicant that it was an accidental death is unacceptable. There was nothing on the spot to suggest that due to fall such a serious injury may be caused. The complainant, injured and the deceased are the relatives. If the applicant would be released on bail there may be possibility of repeating the same crime. As regards the parity, he would submit that the applicant has played altogether a different role. Hence, no parity can be extended.

5. Perusal of the statements referred to by both the learned Counsel reveals that the first informant, deceased and other injured are the close relatives. They had a dispute on the partition. The applicant was not satisfied with the share given to him in the partition and he was demanding more share. The other injured are the

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witnesses to the incident. Undoubtedly, the injured witnesses are more reliable. The specific allegations have been made against the applicant that he assaulted the deceased with the axe on his head, so he fell down and instantaneously died. The post mortem report also supports the injuries. There is recovery of the weapon at the instance of the applicant. The first information report reveals that all the accused were armed with weapons and they started assaulting the family members of the deceased. The applicant was most aggressive and hit the axe on the head of the deceased. The other evidence is also supporting the prosecution case.

6. As far as claim of parity is concerned, the parity is not a rule to be considered in every case. For extending the parity there must be similarity in the role played by each accused and their conduct at the time of the commission of the offence, the weapon used and the overt-act.

7. In the case at hand, the specific allegations have been leveled against the applicant that he was aggressive and armed with the axe. In the quarrel, he hit the axe on the head of the deceased Digambar, who fell down and instantaneously died. Considering his role, the submission of the learned Counsel for the applicant that parity may be extended to the applicant, cannot be accepted. The C.A. report which has been referred by the learned Counsel for the applicant reveals

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that the weapons, i.e. an axe at Exh.11 and the sickle at Exh.12 were stained with human blood, however, the blood group was inconclusive. So, at this juncture, the argument of the learned Counsel for the applicant that since the reports are inconclusive no offence has been committed by the applicant, cannot be accepted.

8. After having gone through the evidence and arguments advanced by the learned Counsel for the applicant and the learned A.P.P. for the respondent, this Court is of the view that there is a strong evidence against the applicant. He has caused the death of his uncle with an axe. For these reasons, the application stands rejected.

9. Needless to state, that the above observations are restricted to the bail application. The Trial Court should not be influenced by the observations made by this Court, during the trial.

(S. G. MEHARE, J.)

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