

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

**CRIMINAL BAIL APPLICATION NO. 686 OF 2022
WITH
INTERIM APPLICATION NO.3279 OF 2022**

Dattatray Suresh Katke	...Applicant
Versus	
State Of Maharashtra	...Respondent

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Mr. Satyam H. Nimbalkar a/w Mr. Abhishek Arote a/w Mr. Rutwik Raut, Advocate for the Applicant.

Mr. Vishal Kolekar for Intervenor in IA/3279/2022.

Mr. N. B. Patil, APP for the Respondent – State.

Mr. V. J. Mahangade API Saswad Police Station (rural), present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 3rd OCTOBER, 2022

PC :

1. The applicant is arrested in connection with C.R. No. 281 of 2018 registered with Saswad Police Station, Pune for offences punishable under Sections 302, 307, 143, 145, 147, 148 and 149 of the Indian Penal Code (for short “IPC”) and Section 3(25) of the Arms Act.

2. The case of the prosecution is as follows:-

The First Information Report is lodged by Sadhu Ananta Dalvi. It is alleged that there are differences between Dadaso Katke, Dattatray Suresh Katke and

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Santosh Dalvi. There were quarrels between son of informant Santosh, Dada Katke and Dattatray Katke. About one and half year ago, there was quarrel between Santosh, Dada Katke and Dattatray Katke. There was settlement with intervention of villagers. However, Dada Katke and Dattatray Katke were threatening Santosh Dalvi. On 31st July 2018, one person came to house of complainant and told his son Santosh that Dadaso Suresh Katke and Dattatray Suresh Katke has called him in Marathi School. The complainant and his son Santosh proceeded towards Marathi School. When they reached near Chintamani Supermarket, Dadaso Suresh Katke, Dattatray Suresh Katke, Hemant Ramesh Gaikwad, Bharat Rambhau Gaikwad, Akshay Balkrishan Gaikwad, Mayur Borade, Dipak Bhandwalkar, Adesh Shivaji Pawar, Mohan Laxman Gaikwad reached there. They formed unlawful assembly. Dada Katke, Bharat Gaikwad, Hemant Gaikwad pointed Katta at Santosh and stated that he should be killed. Dadaso tried to pull trigger of Katta/revolver. Dattatray Katke, Bharat Gaikwad, Hemant Gaikwad caught complainant. Balu Gaikwad assaulted complainant on his head. He was assaulted by others with fist/kick blows and stone. Dadaso Katke and Hemant Gaikwad fired at Santosh. Dipak

Bhandwalkar, Mayur Borade, Akshay Gaikwad, Adesh Pawar assaulted Santosh by fist/kick blows and threw stones on his face.

3. The Applicant preferred an application for bail before the Sessions Court, which was rejected vide order dated 07.10.2020.

4. Supplementary statement of the complainant was recorded on 03rd August 2018. In the said statement he stated that, accused Suresh Katke, Shobha Katke and Santosh Ghisre threw chilli powder in the eyes of Santosh and other accused including Shivaji Pawar had assaulted Santosh with stones. Smt. Sanjana Gaikwad was carrying chilli powder and did not allow anyone to come forward.

5. The first informant in the FIR and supplementary statement did not attribute role of using fire arm or assaulting Santosh. Statement of Sachin Dalvi recorded on 06th August 2018. He stated that when he went to spot he saw Dada Katke, Dattatray Katke, Bharat Gaikwad, Mohan Gaikwad, Hemant Gaikwad, Akshay Gaikwad, Balu Gaikwad, Mayur Borade, Dipak Bhandwalkar, Adesh Pawar, Suresh

Katke, Shobha Katke, Santosh Ghisare, Shivaji Pawar and wife of Balu Gaikwad leaving the place. Santosh was lying with serious injuries on head. Stones and revolver/Katta was lying at spot. He met first informant at the spot of incident. Informant told him that he along with his son had intervened in quarrel between Dada Katke and Sopan Patne and due to previous quarrel Dadaso Katke, Dattatray Katke, Bharat Katke, Hemant Gaikwad, Akshay Gaikwad, Mayur Borade, Dipak Bhandwalkar, Adesh Pawar, Mohan Gaikwad, Balu Gaikwad, Suresh Katke, Shobha Katke, Santosh Ghisare, Shivaji Pawar, Sanjana Gaikwad formed unlawful assembly and Shobha Katke and Sanjana Gaikwad threw chilli powder in the eyes of Santosh Dadaso Katke, Bharat Gaikwad, Hemant Gaikwad pointed revolver and assaulted with fist/kick blows. Dattatray Katke Dadaso Katke, Dipak Bhandwalkar, Mayur Borade, Akshay Gaikwad, Adesh Pawar threw stones on head of Santosh and killed him. Thus, he is not eye witness to incident. In his statement under Section 164 (5) of Cr.P.C. he stated that his brother Abhijeet Dalvi informed him about incident and both went to spot and saw accused running from spot. Statement of Dattatraya Kamathe was recorded on 07th August 2018. He has stated that the accused Dadaso Katke, Dattatray Katke, Mayur

Borade, Akshay Gaikwad, Bharat Gaikwad, Hemant Gaikwad Dipak Bhandwalkar, Adesh Pawar, Mohan Gaikwad, Balu Gaikwad, Suresh Katke, Shobha Katke, Santosh Ghisare, Shivaji Pawar, Sanjana Gaikwad encircled Santosh. Dada Katke, Bharat Gaikwad and Hemant Gaikwad pointed revolver at Santosh Dalvi. Dada Katke tried to fire. There was no firing. Shobha Katke and Sanjana threw Chatni into eyes of Santosh and all assaulted. Akshay threw stone on head of Santosh. Thereafter, Dadaso, Dattatray, Mohan, Hemant, Dipak threw stones on head of Santosh. In his statement under Section 164 of Cr.P.C. he stated that Dadaso Katke tried to fire by revolver but there was no firing. Shobha Katke threw masala in eyes of Santosh. Bharat Gaikwad was armed with gun. Dattatray Katke, Mohan Gaikwad, Dadaso Katke, Akshay Gaikwad, Dipak Bhandwalkar threw stones on his head and assaulted him with fist/kick blows. Father of Santosh intervened. He was assaulted by Akshay Gaikwad. Statements of these witnesses were recorded belatedly. Their version is contrary to version of complainant. Statement of Atul Dimble was recorded on 20th August 2018. The said witness had stated that, on 31st July 2018 Suresh Katke and Dadaso Katke were proceeding from their vehicle towards Saswad.

Some persons came on two wheeler and stopped in front of them. Sopan Patne, Pappu @ Dattatraya Kamthe and others were present. Sopan Patne saw Dadaso Katke and gave call to Santosh Dalvi. After some time Santosh Dalvi, Sadhu Dalvi and five to six persons came there. Santosh Dalvi stated that, those persons should not be spared. He abused Dadaso Katke and started pelting stones on them. They caused damage to the vehicle and pulled Suresh Katke and Dadaso Katke out and assaulted them. He tried to save Dadaso. Sopan Patne and Pappu Kamthe pushed him. Some of them were armed with weapons like sword. He gave call to Dattatraya Katke and called him. The aforesaid persons were assaulting Dadaso Katke by stones. After sometime Dattatraya Katke, Bharat Gaikwad, Hemant Gaikwad, Akshay Gaikwad, Mayur Bhorade, Dipak Bhandwalkar, Aadesh Pawar, Mohan Gaikwad, Balu Gaikwad, Suresh Katke, Shobha Katke, Santosh Ghisre, Shivaji Pawar, Sanjana Gaikwad came at the place of incident. They tried to intervene in the quarrel. Both sides assaulted each other. Both the group left the place of incident. After sometime the witness learnt that Santosh Dalvi was killed by pelting stone on his head and even Sadhu Dalvi had sustained injury. Similarly the statement of Akshay Limbhore recorded on

20th August 2018 also reiterated the version of aforesaid witness. Statement of Hanumant Katke and Prashant Katke is also similar. In the statement of Sadhu Dalvi recorded under Section 164 of Cr.P.C, it was alleged that, there was quarrel between Patne and Dada Katke. He along with Santosh went their to intervene. Dadaso Katke, Dattatray Katke, Hemant Gaikwad, Bharat Gaikwad, Akshay Gaikwad, Mayur Borade, Dipak Bhandwalkar, Mohan Gaikwad, Balkrishna Gaikwad, Suresh Katke, Shobha Katke, Santosh Ghisare, Shivaji Pawar, Sanjana Gaikwad were quarreling with Patne. Shobha and Sanjana threw chilli powder in eyes of Santosh. Dada, Dattatray, Mohan, Hemant, Balkrishna assaulted Santosh with stone. Dattatray, Hemant, Mohan, Balkrishna, Akshay, Borade, Bhandwalkar assaulted Santosh with kicks. Suresh and Santosh Gisare caught complainant. Dattatray Katke, Dada Katke, Mohan and Hemant threw stone on head of Santosh. Chilli powder was thrown in eyes of complainant. Dada, Dattatray, Bharat and Mohan assaulted him with kicks and stone on his head. Dada, Mohan, Datta fired in air. The complainant has completely changed his version in this statement which was recorded two months after incident.

6. Statement of Abhijeet Dalvi was recorded on 07.08.2018. According to him on 31.07.2018 the accused including applicant were assaulting Santosh Dalvi. The accused threw stone on head of Santosh. His statement was recorded under Section 164 of Cr.P.C. on 16.10.2018. He stated that on 31.07.2018, Sadhu Dalvi and Santosh Dalvi were being assaulted. Sadhu Dalvi was assaulted by Mohan Gaikwad, Bharat Gaikwad, Balkrishna Gaikwad. Santosh Dalvi was assaulted by Dattatray Katke, Dadaso Katke, Akshay Gaikwad, Hemant Gaikwad by stone. His version contradicts complainant and other witnesses. There is delay in recording statements. Statement of Sopan Patne is recorded on 07.08.2018. His presence is not referred by complainant in FIR on supplementary statement. According to this witness on 31.07.2018 he was proceeding to Chambhali with others on motorcycle. Dada Katke came in vehicle and intercepted him. He abused them. The witness questioned Dada Katke. Dipak Bhandwalkar came there. He pointed pistol at him. Santosh Dalvi came there. Sadhu Dalvi followed him. Dattatray Katke and his mother Shobha came to the spot. Shobha Katke caught him and Santosh, Dipak abused them. Sanjana came there. Thereafter, Bharat, Mohan, Hemant, Akshay, Mayur, Santosh Ghisare,

Shivaji came there. Bharat and Hemant pointed pistol at Santosh Dalvi. Dada Katke also pointed country revolver and tried to fire at Santosh. There was no firing. Shobha and Sanjana threw chilli powder in eyes of Santosh. All accused started assaulting him. Akshay threw stone on head of Santosh. Dadaso, Dattatray, Mohan, Bharat, Hemant, Dipak Bhandwalkar threw stones on head of Santosh. He fell down. His statement was recorded under Section 164 of Cr.P.C. on 17.10.2018. He stated that Dada Katke pointed revolver at him. Dipak Bhandwalkar brought Santosh Dalvi. Dada Katke pointed revolver at Santosh. Dattatray, Akshay, Bharat, Mohan, Shivaji, Shobha, Sanjana, Dipak, Balkrishna, Santosh Ghisare came to spot. Shobha threw chilli powder in eyes of Santosh Dalvi. Mohan, Bharat and Hemant pointed pistol at Santosh Dalvi. Akshay, Mohan, Bharat, Dada, Dattatray and Hemant threw stone on head of Santosh.

7. Learned advocate for the applicant submitted that the applicant is in custody for a period about four years. The applicant was not armed with any weapon. In the light of the factual matrix appearing in the FIR the overt act attributed to the applicant and co-accused is similar.

Several other accused are granted bail. There is variation in the statement of the first informant recorded under Section 164 of Cr.P.C. wherein it is alleged that the applicant has assaulted the deceased by stone. Accused Mohan Gaikwad has been granted bail by this Court on 12.02.2020 wherein the Court has considered the aspects of variation in the statement of first informant and the other witnesses.

8. Learned APP submitted that specific role has been attributed to the applicant. He was amongst the other accused, who was assaulted the deceased. The role attributed to the applicant and co-accused Hemant Gaikwad is similar. In the statement of first informant recorded under Section 164 of Cr.P.C. role of assaulting the victim by stone has been attributed to the applicant. The postmortem report indicate that the cause of death is head injury which corroborates the version of witnesses. Other witnesses have referred to participation of applicant in assault on deceased.

9. Learned advocate for the complainant submitted that the applicant is involved in the crime. The application preferred by Hemant Gaikwad has been withdrawn before

this Court since the Court was not inclined to grant bail. The reliance is placed on order dated 15.03.2022 passed by this Court in Criminal Bail Application No. 2767 of 2021. Earlier application of the said accused was also withdrawn vide order dated 27.09.2019 since court was not inclined to grant bail. The case against applicant and Hemant Gaikwad is identical. On instructions it is submitted that the trial has commenced. One witness has been examined. Trial has been expedited by this Court. This fact is controverted by learned advocate for the applicant. On instructions, it is submitted that charge is framed and application under Section 294 of Cr.P.C. is filed. CDR is awaited. The prosecution has not examined any witness. Although trial is expedited vide order dated 15.03.2022, there is no progress in trial.

10. In the FIR dated 31.07.2018 it is alleged that one boy came to residence of complainant and told that Santosh has been called by Dadaso Katke and Dattatray Katke in Marathi School. Whereas statements of witnesses Atul Dimble mention that Santosh was called by Sopan Patne. Statement of Atul Dimble depicts contrary story. First informant in the FIR, has stated that Dada Katke, Bharat

Gaikwad, Hemant Gaikwad were armed with country revolver. They pointed revolver at Santosh and Dadaso tried to fire. Dattatray Katke (applicant), Bharat Gaikwad and Hemant caught complainant. Balu Gaikwad assaulted him on his head with some article. He was assaulted by fist/kick blows. Dadaso and Hemant fired at Santosh. Accused Dipak, Mayur, Akshay, Adesh assaulted Santosh by fist/kick blows and threw stones on head. No role of pointing revolver or assaulting Santosh is attributed to applicant. Supplementary statement of complainant dated 03.08.2018 also do not attribute role of assaulting Santosh to the applicant. Thereafter, statement of Sachin Dalvi, Abhijeet Dalvi were recorded on 06.08.2018 and 07.08.2018. Statement of Sopan Patne was recorded on 07.08.2018. Statement of Dattatray Kamthe was recorded on 07.08.2018. These witnesses have shown overt act of assaulting Santosh to applicant. According to version of Atul Dimble, Sopan Patne has instigated gave call to Santosh Dalvi. There was fight between both sides. After the statement of these witnesses, statement of complainant was recorded under section 164 of Cr.P.C. on 16.10.2018. He has assigned role of hitting Santosh by stone to applicant. Statement of other witnesses were also recorded

under Section 164 of Cr.P.C. Statement of Nitin Katke, Akshay Limbhore, Hanumant Katke, Prashant Katke, Vijay Katke are similar to version of Atul Dimble and runs counter to prosecution case. Shobha Katke and Sanjana Gaikwad were granted bail by this Court vide order dated 24.01.2019 and 21.01.2019. Santosh Ghisare is granted bail by this Court by order dated 08.03.2019. Aadesh Pawar and Shivaji Pawar were granted bail by this Court vide order dated 02.08.2019 and 25.04.2019. Mohan Gaikwad was granted bail by this Court vide order dated 12.02.2020. Mayur Borade and Balkrishna Gaikwad were granted bail by this Court by order dated 04.03.2021. Bharat Gaikwad is granted bail by this Court by order dated 31.07.2021. Deepak Bhandwalkar was granted bail vide order dated 27.09.2021. Role of these accused is evident from statements referred above. Without prejudice to defense of Hemant Gaikwad the allegations against him in FIR can be distinguished from applicant. The applicant is in jail for four years. He is entitled for bail.

11. Considering the factual aspects as above further detention of the applicant is not warranted.

ORDER

(i) Criminal Bail Application No. 686 of 2022 is allowed.

- (ii) The applicant is directed to be released on bail in connection with C.R. No. 281 of 2018 registered with Saswad Police Station, Pune on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend the concerned police station on the first Saturday of every month between 10 am to 12 noon, until further orders.
- (iv) The applicant shall inform his latest place of residence and cellphone number, immediately after being released on bail, to the investigating officer and also the court seized of the matter and shall intimate the change in residential address and cellphone number, whenever such changes occur.
- (v) The applicant shall regularly attend the trial Court and cooperate in the expeditious conclusion of the trial.
- (vi) The applicant shall not tamper with the prosecution evidence or attempt to give threats or inducement to the first informant and any of the prosecution witnesses.
- (vii) In the event of two consecutive defaults in attending the police station or the trial Court or breach of any of the aforesaid conditions, the prosecution shall be at liberty to move for cancellation of bail.

(viii) It is made clear that the observations made hereinabove are for the purpose of determination of entitlement for bail and the trial Court shall not be influenced by any of these observations while determining the guilt or otherwise of the accused.

(ix) Interim Application and Bail Application stand disposed of in the aforesaid terms.

(PRAKASH D. NAIK, J.)