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

BAIL APPLICATION NO. 1220 OF 2021

Uttam @ Balu Malhari Bansude ...Applicant

Versus

State of Maharashtra ...Respondent

.....
Mr. Satyam H. Nimbalkar for the Applicant.
Mrs. Anamika Malhotra, APP for the Respondent -State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 9TH DECEMBER, 2021
PRONOUNCED ON : 3RD JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 1016 of 2018 registered with Indapur Police Station, Pune for the offence punishable under Sections 302, 307, 120(B), 341, 143, 147, 148, 149 and 506 of the Indian Penal Code (the IPC).

2. Prosecution case in short is that on 9th December, 2018, the informant received a phone call from his labour, namely,

Javed Ahmed Shaikh that he and informant's brother, namely, Balu (since deceased) had been assaulted by accused Sumit Raghunath Jamdar and 4 to 5 unknown persons by means of sharp weapons on their heads. Informant rushed and found his brother Balu in a pool of blood. He was immediately taken to Government Hospital, Indapur where he was declared dead. Informant accordingly lodged the First Information Report.

3. Mr. Nimbalkar, learned Counsel for the applicant, submits that the present applicant is accused No. 6. Prosecution witnesses have not attributed any overt act on the part of applicant which would *prima facie* show his involvement in the present crime. There are no criminal antecedents. Investigation is completed. The trial may take longer time. In such circumstances, the applicant deserves to be released on bail.

4. Mrs. Malhotra, learned APP, assisted by Mr. Zade, learned Counsel for the intervenor, submitted that not only

applicant along with other accused formed unlawful assembly but in prosecution of their common object assaulted deceased by means of sharp weapons. Learned APP also invited my attention to the statement of injured witness, namely, Javed Ahmed Shaikh and as also his statement recorded under Section 164 of the Code of Criminal Procedure. Learned APP also invited my attention to prosecution witnesses, namely, Shivaji Pandurang Suryawanshi, Shivaji Kalyan Jadhav, Prasad Balasaheb Chavan and Prashant Dnyaneshwar Mane. According to learned APP, there being no merit in the application, same is liable to be rejected.

5. Perused investigation papers.

6. Admittedly, the name of applicant is not appearing in the FIR. However, during the course of investigation, according to prosecution, it revealed that applicant was one of the assailant. Much emphasized is laid on the statement of injured, namely, Javed Ahmed Shaikh. His statement under

Section 161 of the Code of Criminal Procedure was recorded on 19th December, 2018 wherein he stated that the applicant along with other accused came in a Scorpio vehicle. They were armed with sickles. Accused Sumit Raghunath Jamdar was armed with an axe while accused Rahul Jamdar with a koyta. His statement then shows that accused Sumit Jamdar and Nilesh Bansude gave blows of axe and koyta on the head of deceased and even one of them gave blow of a sickle on his head.

7. Interestingly, no overt act is attributed on the part of applicant. His statement again came to be recorded on the very next day i.e. 20th December, 2018 under Section 164 of the Code of Criminal Procedure by Judicial Magistrate First Class, Indapur wherein also he repeated the same things. While in his earlier statement, he gave applicant's specific name as Balu Bansude but while giving his statement under Section 164 of the Code of Criminal Procedure, he said a person by named Balu was also armed with a sickle.

8. Be that as it may, the fact remains that in both these statements, the role of applicant is nowhere specified. At the most his presence armed with a sickle can be inferred.

9. Similar are the statements of Shivaji Pandurang Suryawanshi and Shivaji Kalyan Jadhav. As far as the statements of Prashant Dnyaneshwar Mane and Prasad Balasaheb Chavan are concerned, they are purely in the nature of hearsay.

10. There is statement of one Navnath Ajinath Mane, who at the relevant time was working with accused Rahul Jamdar. According to his statement, on 9th December, 2018 at about 3.00 pm, there was gathering of accused Sumit Jamdar, Kiran Shinde, Rahul Jamdar, Ajit Jamdar, Nilesh Bansude, Balu Bansude (applicant), Nitin Jamdar, Anna Bhosale, Kedar Jadhav and 2 to 3 persons in the house of accused Sumit Jamdar and when this witness had been to the house of Sumit, he heard accused Sumit addressing the rest of the

persons that “deceased should be beaten today” and after seeing him, they stopped discussion.

11. From his statement, the main role in the whole episode appears to be that of accused Sumit Jamdar. I am also mindful of the fact that Section 149 of IPC has been invoked, however, common object of unlawful assembly will have to be established at the time of trial by prosecution.

12. As of now, no overt act is discernible from the material available on record qua applicant. In view of above, in my considered opinion, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Uttam @ Balu Malhari Bansude shall be released on bail in Crime No. 1016 of 2018 registered with Indapur Police Station, Pune on his executing PR. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the concerned police station on every Monday in between 11.00 am to 1.00 pm till the conclusion of trial.

(iv) The applicant shall attend the trial Court proceedings regularly.

(v) Bail before the trial Court.

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

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)