

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3236 OF 2021**

Lalaso Awaba Mohite	]	
Age - 45 years, Occu - Agri.	]	
R/ at Post Mankarnwadi, Tal. Man,	]	
Dist. Satara.	]	Applicants
(Presently in Central Prison,	]	
Kalamba, Kolhapur)	]	
Vs.		
The State of Maharashtra	]	
(At the instance of Mhaswad	]	
Police Station, District - Satara,	]	
vide C.R. No.165/2020)	]	Respondent

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Mr. Rajaram V. Bansode, for Applicant.

Ms. Geeta P. Mulekar, A.P. P, for Respondent-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 26th JULY, 2022.

PRONOUNCED ON : 28th JULY, 2022.

P.C:

1. This is an application under section 439 of the Code of Criminal Procedure, 1973 by the applicant who is original accused No.4. Out of eleven accused, nine have already been released on bail and one is absconding.

2. A charge-sheet has been filed against all the accused by *Mhaswad* Police Station in connection with Crime No.165 of 2020 for the offences punishable under sections 302, 307, 326, 324, 323, 504, 506, 143, 144, 147, 148, 149, 188 and 269 of the Indian Penal Code, 1860 and Section 51 of the Disaster Management Act as well as Section 11 of Maharashtra COVID - 19 Rules, 2020.

3. Facts in brief are as under;

The applicant was one of the members of an unlawful assembly comprising rest of the accused who were armed with deadly weapons viz; axes, sticks and stones. It was 25th July, 2020 - amid spread of COVID - 19 virus across the globe. Members of the unlawful assembly attempted to commit murder of the victim - Mahadev Jagdale by indiscriminate assault with the help of the weapons which ultimately resulted into the death of the deceased after eight days. The prosecution alleges that the homicidal death of the deceased is a result of rioting by the members of the unlawful assembly. It is, *inter alia*, alleged that the members of the unlawful assembly had extended threats of dire consequences to the rival group, who are indubitably their close relatives.

4. It is an undisputed fact that there is a cross complaint from the victim's group on the same day. After the death of Mahadev Jagdale, section 302 of the Indian Penal Code has been invoked by the Investigating Officer. The Investigating Officer has also invoked section 51 of the Disaster Management Act as well as Section 11 of Maharashtra COVID-19 Rules, 2020 against the applicant and the co-accused.

5. Vitthal Mahadev Jagdale was the first informant and son of deceased Mahadev Jagdale. He too sustained injuries during the aforesaid incident. Admittedly, there has been a longstanding civil dispute between these two groups in respect of Gat No.239 at *Mauje Mankarnwadi, Taluka - Man* and District - *Satara*. It is alleged that on 25th July, 2020 around 6.00 p.m, when first informant -Vitthal Jagdale was standing near *Maruti* temple at *Lonar Vasti*, his maternal

uncle - accused No.2 - Narayan Mohite abused him. However, the first informant did not pay any heed and left the spot on his motorbike. On the same day, at around 7.00 p.m when Akash Narayan Mohite was passing by the way, he was intercepted by the first informant who asked him as to why his father had abused him. Akash Mohite alighted from his vehicle and started abusing the first informant. At that time, all the accused along with the applicant came over there who were armed with axes, sticks and stones etc. They started assaulting the first informant. After hearing hue and cry and the commotion, father of the first informant - Mahadev Jagdale came over there. At that time, the applicant threatened the first informant and other witnesses that he would eliminate the entire family. By saying so, applicant had inflicted a blow of an axe on the head of the deceased Mahadev Jagdale who fell on the ground and became unconscious. There was a fierce fight between the two groups who appear to have indiscriminately used respective weapons by inflicting blows upon each other. As already stated, subsequently, Mahadev Jagdale succumbed to the fatal injuries sustained by him on his head.

6. Autopsy report *qua* deceased Mahadev Jagdale clearly depicts that the cause of death was "due to head injury", more particularly, injury over vertex and parietal area.

7. I heard Mr. Bansode, learned Counsel for the applicant at length.

8. Counsel took me through the copy of the charge-sheet and submits that except the applicant, rest of the accused have already

been enlarged on bail. He also invited my attention to the fact that rival group was aggressor and, in retaliation, the accused exercised their right of private defence. Counsel would argue that the applicant has been incarcerated for twenty two months. Since nothing is to be recovered, he is entitled to be admitted to bail on the ground of parity. He further submits that there are no criminal antecedents *qua* the applicant.

9. Learned A.P.P while objecting release of the applicant on bail submits that there are three eye witnesses, in the sense, there is direct and clinching evidence against the applicant who had not only committed murder of the deceased Mahadev Jagdale but also threatened the witness of eliminating the entire family. There is a possibility of repeating similar offence by the applicant, in case of his release on bail. Learned A.P.P has also exhibited her apprehension that in case of his release, the applicant might flee away from justice.

10. Since charge-sheet has already been filed, what is required to be seen is as to whether the applicant's presence can be procured during trial of the case.

11. Admittedly, there are no antecedents. *Prima facie*, it seems that root cause of the blood feud between the two groups of family is a civil dispute in respect of an agricultural land.

12. Admittedly, there is a cross F.I.R i.e Crime No.165 of 2020 by the victims' group which came to be lodged on the following day i.e on 26th July, 2020 at 13.58 hours by the present applicant. The First Information Report lodged by the present applicant in Crime No.166

of 2020 depicts similar allegation as that of the allegations levelled by Vitthal Jagdale who is the first informant. The cross First Information Report reveals that even this applicant had sustained injury on his head alleged to have been inflicted by Sunil Jagdale by means of an axe.

13. It would not be worthy to go into the merits and demerits of the case at this stage. Though the offence is grave and serious and nature of evidence also appears to be direct yet, in light of the fact that it was an outcome of civil dispute, it would be just and proper to admit the applicant to bail, as normal rule of criminal jurisprudence is bail and not jail. *Prima facie*, it appears that it was due to a sudden quarrel between two groups in which, unfortunately, an old man succumbed to the injuries.

14. Taking into consideration overall circumstances and in view of the fact that rest of the accused have already been released on bail, the applicant herein can also be admitted to bail on the ground of parity and therefore, following order is passed;

[a] The applicant be released on bail on executing a PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount in Crime No.165 of 2020 registered with *Mhaswad* Police Station under sections 302, 307, 326, 324, 323, 504, 506, 143, 144, 147, 148, 149, 188 and 269 of the Indian Penal Code, 1860 and section 51 of the Disaster Management Act as well as section 11 of Maharashtra COVID - 19 Rules, 2020;

[b] The applicant shall not leave the jurisdiction of the Sessions Court without seeking prior permission;

[c] The applicant shall furnish his cell number and residential address to the trial Court as well as to the Investigating Officer;

[d] The applicant shall not make any attempt to influence the prosecution witnesses;

[e] The applicant shall appear before the trial Court, scrupulously, on each of the dates.

15. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]