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

BAIL APPLICATION NO. 3545 OF 2021

Mr. Ankush Namdeo Pagere ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Mr. M.S. Mohite, Senior Advocate i/b. Mr. Amey Deshpande
for the Applicant.

Mrs. P. P. Shinde, 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. I-92 of 2020 registered with Wadiwhare Police Station, District- Nashik for the offence punishable under Sections 302, 307, 143, 147, 148, 149, 323, 324, 504 and 506 of the Indian Penal Code (the IPC).

2. Informant is the owner of Gat No. 544 in Nandgaon,

Budruk. There is an ongoing dispute in respect of the said land between him and applicant and other accused. On 23rd August, 2020, while he was digging a pit with the help of JCB machine, the applicant along with his mother Sumanbai Pagere and his wife Rupali came and started abusing. They also started claiming ownership of the land. It is alleged that the applicant then gave a blow of a stick on the back of informant and his brother, namely, Sandeep. After 10 to 15 minutes, it is further alleged, the other accused also joined and started beating them by means of wooden logs. When informant's cousins, namely, Suryabhan Pandit Pagere and Sampat Pandit Pagere came to their rescue, they were also assaulted by accused by means of wooden logs. Even females from family were also beaten by fists and kick blows. Informant accordingly lodged the First Information Report (FIR).

3. Mr. Mohite, learned Senior Counsel for the applicant, submits that because of ongoing dispute in respect of agricultural land, the alleged incident took place. Out of

which, the counter FIR is also filed by present applicant against the informant and others. Moreover, as far as the role of applicant is concerned, it is alleged that he had assaulted on the back of informant and his brother Sandeep by means of a stick and nothing beyond that. According to learned Senior Counsel, co-accused Namdeo Kisan Pagere has been released on bail by this Court (**Coram: Bharati Dangre, J.**) vide order dated 28th July, 2021. Investigation is over. Charge-sheet has been filed. There are no criminal antecedents. In such circumstances, the applicant deserves to be released on bail, argued learned Senior Counsel.

4. Mrs.Shinde, learned APP, on the other hand, opposes submissions and invited my attention to the statement of injured, namely, Sandeep Ganpat Kokane and as also injury certificate in respect of the injured. According to learned APP, not only the applicant and others formed an unlawful assembly but also caused the death of Sampat Pandit Pagere and then took me to the findings of the postmortem report wherein the cause of death given is death due to head injury.

There being no merit in the application, same is liable to be rejected, argued learned APP.

5. Perused investigation papers.

6. First of all, it may be noted from the FIR that a very specific allegation is made against the applicant and the role attributed to him is that he had given a blow of a stick on the back of informant and his brother, namely, Sandeep Ganpat Kokane.

7. Now, if one goes through the statement of Sandeep Ganpat Kokane, then one finds that he and his brother Sahebrao i.e. informant were assaulted by means of stick by applicant on his leg and on the head, back and eye of informant. Thus, there is *prima facie* great inconsistency between the contents of the FIR and the statement of this witness.

8. Similarly, medical certificate filed on record shows that informant had sustained head injury, injury over right eye, contusion over left mastoid region, abrasion over great toe

and both legs. Interestingly, no injury was noted on the back of informant although it is claimed in the FIR by informant that he was assaulted on his back by applicant by means of a stick. Similarly, no such injury certificate is forthcoming qua this witness.

9. As far as death of deceased Sampat in question is concerned, admittedly, he was assaulted by others. I am also mindful of the fact that Section 149 of IPC has been invoked but common object will have to be established at the time of trial by prosecution.

10. Having regard to the material on record, in my considered view, the applicant is entitled to be released on bail. Hence, the following order :

ORDER

(i) Applicant- Ankush Namdeo Pagere shall be released on bail in Crime No. I-92 of 2020 registered with Wadiwhare Police Station, District-Nashik on his executing P.R. Bond in the sum of

Rs. 20,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any police officer and shall not tamper with evidence.

(iii) The applicant shall not leave the jurisdiction of the trial Court without prior permission of the trial Court.

(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.)