

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

CRIMINAL BAIL APPLICATION NO.4245 OF 2021

Durgesh Balasaheb Gade ...Applicant
Versus
The State of Maharashtra ...Respondent

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Ms. Shubhangi Parulekar, Advocate for the Applicant.

Mr. M. G. Patil, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.
RESERVED ON : 4th OCTOBER, 2022.
PRONOUNCED ON : 18th OCTOBER, 2022.**

PER COURT:

1. The applicant is arrested on 15.12.2019 in connection with C.R. No.428 of 2019 registered with Khed Police Station for offence punishable under Section 302 r/w Section 34 of Indian Penal Code (for short “IPC”).

2. The First Information Report (for short ‘FIR’) was registered on 13.12.2019 at the instance of Vivek Shivaji Mohite. The complainant is employed with Dhoot Builders as Civil Engineer. His employer had undertaken the construction work of A.D.R. Excel. Navnath Laxman Zodge was appointed as Sub-contractor. He was conducting work since last six months. Mayur Tambe had visited the site of Company in connection with allotment of work to

him. He had visited for allotment of work relating to scrap. On 13.12.2019, the complainant and other employees joined the work. During lunch time, the staff members were having lunch. Navnath Zodge also joined for lunch. At that time Mayur Tambe and four unknown persons visited the site and called Navnath Zodge outside the office. Navnath Zodge told them that he would join after finishing lunch. Thereafter, he went out. There was discussion between Navnath Zodge and the persons who came to meet him. The complainant saw from window that there was altercation between Navnath Zodge and Mayur Tambe. During altercation, Mayur Tambe removed the sickle concealed by him behind and assaulted Navnath Zodge on his head. Navnath Zodge shouted for help. Members of staff tried to go out. One of the accused stood on the door of the office with sickle and threatened them. Navnath Zodge was also assaulted by other persons accompanying Mayur Tambe with sickle. After assaulting Navnath Zodge, all of them left the place. Navnath Zodge was taken to hospital for treatment. He was declared dead. Investigation proceeded. Statements of Abhijeet More, Abhishek Jadhav, Ketan Jagtap, Amardeep Birgikar, Prashant Suryavanshi and various other witnesses were recorded. Test identification parade was conducted on 19.12.2019. On completing investigation, charge-sheet was

filed.

3. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is in custody for a period of about 2 years and 10 months. There are no criminal antecedents against the applicant. The applicant is not named in the FIR or statements of any witnesses. The applicant was allegedly amongst unknown person accompanying Mayur Tambe. Test identification parade is defective. The witnesses, who had best opportunity to witness the incident and closely watched the assailant has not identified the applicant in test identification parade. The witness, who had least opportunity to view the incident of assault or see the accused, has identified the applicant.

4. Learned APP submitted that the applicant was amongst the unknown persons. The applicant visited the site along with Mayur Tambe. He was armed with sickle. He is involved in assaulting Navnath Zodge. Eye witness Prashant Sanjay Suryavanshi and Ketan Raghuveer Jagtap has identified the applicant.

5. The alleged incident had occurred on 13.12.2019. The first informant had stated that Mayur Tambe and four other persons came near the door of the office of Company. The first informant were having lunch. They called Navnath Zodge outside the office

and told them that he would join them after lunch. Thereafter, the complainant found that Mayur Tambe was assaulting Navnath Zodge. One person stood near the door and threatened the members of the staff. All others were assaulting the deceased with sickles. Mayur Tambe assaulted with sickle. The applicant is not named in the FIR. The applicant is not known to the first informant. In the test identification parade he has not identified the applicant, although he is the eye witness to the incident. Abhijeet Suresh More is also the eye witness to the incident. His statement was recorded on 15.12.2019. He has referred to Mayur Tambe and other unknown persons as assailants. The applicant is not named in his statement. There is no material to show that the said witness has identified any unknown person in the test identification parade. The statement of witness Abhishek Jadhav was recorded on 16.12.2019. He has stated that on 13.12.2019 during lunch time, Navnath Zodge was having lunch. The witness finished his lunch and went to Porta Cabin. Navnath Zodge met him. Some person had come to site to meet Navnath Zodge. He was told by Navnath Zodge to show the scrap material to the four persons, who came to visit him. He showed them scrap and came back to Porta Cabin. Four persons who visited the site had discussion with Navnath Zodge. He heard shouts of Navnath

Zodge. The witness and the other staff tried to hide themselves in the cabin. Thereafter, Navnath Zodge was found lying in pool of blood with several injuries on his person. This witness had occasion to have close conversation with four persons, who had visited the site and to whom the applicant had shown the scrap material at the instance of Navnath Zodge. However, in the test identification parade he has not identified the applicant. Ketan Jagtap is another eye witness. His statement was recorded on 16.12.2019. According to him on 13.12.2019 some persons came to meet Navnath Zodge. They were informed that he is having lunch. Amerdeep Birgikar was told to make entry of their visit. Navnath Zodge went out of cabin. The visitors met him outside the cabin. The persons went to the cabin with Abhishek Jadhav. The witness and Amardeep Birgikar sat in the security cabin. Mayur Tambe was talking with Navnath Zodge. He heard shouts of Navnath Zodge. The assailants were assaulting Navnath Zodge with weapons. Due to fear, the witness and others ran towards the road. This witness has identified the applicant in the test identification parade. According to him he was sitting in the cabin along with Amardeep Birgikar and both of them were together at the time of incident. However, Amerdeep Birgikar has not identified the applicant as assailant. Statement of Amardeep

Birgikar was recorded on 16.12.2019. According to him on 13.12.2019 Mayur Tambe and others came to the office and Company and Mayur Tambe stated that he wants to meet Navnath Zodge. He was informed that Navnath Zodge was having lunch and he can meet him after lunch. Ketan Jagtap made entry in the register. Navnath Zodge went out of the Porta Cabin. Mayur Tambe had a talk with Navnath Zodge. The witness sat with Ketan Jagtap in the security Cabin. He saw Mayur Tambe talking to Navnath Zodge, thereafter he heard shouts of Navnath Zodge. He came out of the security cabin with Ketan Jagtap and he noticed that Mayur Tambe was assaulting Navnath Zodge with sickle. His associates were also assaulting Navnath Zodge with sickle. Both of them ran away towards the road. Prosecution case is that Ketan Jagtap was accompanying this witness has identified the applicant whereas, this witness Amit Birgikar did not identify the applicant. Both of them were sitting in the security cabin. Statement of Prashant Suryavanshi was recorded on 15.12.2019. According to him, he was in the Porta Cabin. He saw from the window that Mayur Tambe and his associates had assaulted Navnath Zodge. One of the accused threatened the witness and others not to move out of the Porta Cabin and he continued to be in Porta Cabin. This witness has identified the applicant. The witnesses who had a

better opportunity to view the incident and come close with the assailants have not identified the applicant as one of unknown person, who participated in the assault. From the memorandum of test identification parade it can be seen that the first informant Vivek Mohite has not identified the applicant as assailant but identified Mayur Tambe, Tejas Manjre and Sanjay Manjule. Prashant Suryawanshi identified Mayur Tambe, Tejas Manjre and applicant. Ketan Jagtap identified Mayur Tambe, Tejas Manjare, Sanjay Manjule and applicant. Amardeep Birgikar identified Mayur Tambe, Sanjay Manjule but did not identify applicant and others. Abhishek Jadhav did not identify applicant and other accused.

6. Considering the aforesaid circumstances and the fact that the applicant is in jail for a period of about 2 years and 10 months bail can be granted to the applicant. Hence, I pass the following order :

ORDER

- i. Criminal Bail Application No.4245 of 2021 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.428 of 2019 registered with Khed Police Station, Dist. Pune on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.

- iv. The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- v. The applicant shall not tamper with the evidence and shall not approach any witnesses or threaten them.
- vi. The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court.
- vii. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)