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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.860 OF 2023

**BALAJI S/O SHIVAJI DHAGE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Fernandes Cedric D
APP for Respondent/State : Mr. K.S. Patil
...

CORAM : S.G. MEHARE, J.

DATED : JUNE 22, 2023

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant is seeking bail in Crime No.119 of 2022 registered with Kondalwadi Police Station, District Nanded for the offence punishable under Section 302, 201, 143, 147, 148, 149 of Indian Penal Code.
3. The prosecution has a case that the incident happened in front of the house of the present applicant. The stone has been recovered at his instance. He had threatened the deceased to kill before the alleged incident. There was one eye witness to the incident who was the maternal brother of the deceased. On the basis of these allegations and the material collected against the applicant, the prosecution is opposing the application.

4. Learned counsel for the applicant would submit that the sole eye witness who was the maternal brother of the deceased did not state before the police immediately on the next day of the incident. His statement was recorded about four days of the incident. He has referred to the statement of one neighbour and argued that the neighbour did not state anything about the incident. The dead body was not found in front of the house of the applicant. A witness namely Deepak stated that the deceased himself went toward the house of the applicant, but he was not knowing whether he actually went to the house of the applicant. If it was a fight amongst the accused and the deceased, there must be neighbouring witness but that is lacking. Therefore, bare recovery under Section 27 is insufficient to detain the applicant in jail. Similarly situated co-accused have been granted bail. Hence, he may be granted bail.

5. Perused the papers. It has been alleged that before the incident, the applicant had threatened to kill the deceased. Therefore, the father of the deceased was trying to settle the dispute with the help of the President Tanta Mukti and one Deepak. As per the FIR, Deepak told the first informant that all the accused took the deceased by quarelling. However, he did not support this statement. The dead body was not found in front of the house of the applicant. The neighbours do not come forward to state that the quarrel took

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place in front of his house. The sole eye witness is the relative of the deceased. However, his belated statement is one of the ground to consider the bail. The investigation has been completed. There are no antecedents to the discredit of the applicant. Hence, he deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Balaji Shivaji Dhage, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions that he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall not enter his village for three months from the date of his release.
- (iv) The applicant shall attend the trial on each and every date.

(S.G. MEHARE, J.)