

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

BAIL APPLICATION NO. 1603 OF 2023

**GANESH @ MAHESH S/O.SUNIL PALVE
VERSUS
THE STATE OF MAHARASHTRA.**

...

Mr. Rajendra Deshmukh, Senior Advocate alongwith
Mr. Vishal A. Chavan h/f. Mr. D.R. Deshmukh, Advocate
for the applicant.

Mr. K.S. Patil, APP for the State.

Mr. N.B. Narwade, Advocate for the complainant.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 26th October, 2023
PRONOUNCED ON : 31st October, 2023.**

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 559 of 2022 registered with Police Station, Pathardi, Dist. Ahmednagar for the offence punishable under Sections 302, 307, 326, 120-B, 212, 143, 147, 148, 149, 504, 506 r/w. 34 of IPC, Sections 4 and 25 of the Arms Act and Section 7 of the Maharashtra Prevention of Defacement of Property Act, 1995.

2. The investigation progressed on the basis of information given by one Balasaheb Palve. He alleges that on first June 2022 elections of the Devrai Multipurpose Co-operative Society were held. The brother of the informant alongwith his panel members were elected with

thumping majority. A procession was arranged to celebrate the victory. When the procession reached in front of the house of accused Anil Palve and Sunil Palve, members of the defeated panel, sudden attack was mounted by accused persons on the participants of the procession. The accused persons were holding deadly weapons like sword, knives, wooden logs, sticks etc. In that attack, brother of the informant - Ajay suffered fatal injuries, whereas, others suffered bleeding injuries. Accordingly crime number 559 of 2022 for the aforesaid offences has been registered. During the course of investigation, statements of witnesses under section 161 of Cr.P.C. so also under Section 164 of the Cr.P.C. have been recorded. The applicant came to be arrested in pursuance of the aforesaid crimes. His plea for grant of bail has been rejected by the trial court vide order dated 24th August 2023. Hence, the present application.

3. Mr. Rajendra Deshmukh, learned Senior Advocate appearing for the applicant would submit that it is the case of scuffle between the members of two panels at election of multipurpose cooperative society, cross complaints have been lodged making allegations against each other. He would submit that the deceased, namely, Ajay Palve lost his life in that incident. The applicant is not attributed any role in the injury suffered by the deceased. The allegations in the FIR attributes applicant to be the assailant against Vishnu Kailash Palve. Learned Senior Advocate would invite attention of this court to the injury certificate of Vishnu Palve and submit that he had suffered simple injuries. He would further submit that the applicant is not attributed any role in commission of the offence by the independent witnesses. He invited the attention of this Court to the statement of witnesses recorded under section 164 of

Cr.PC., wherein, no role is attributed against the applicant. The learned Senior Advocate would further submit that there is no recovery of weapon or any incriminating article from applicant to support the case of the prosecution as regards attribution against the applicant. He would therefore urge that the applicant be released on bail since the investigation is complete and the charge sheet is filed.

4. Learned A.P.P. as well as learned advocate for the complainant/informant vehemently opposes the plea for grant of bail. They would submit that the applicant was holding deadly weapon like knife in his hand and caused injury on the head of Vishnu. They would point out that the applicant was absconding from the date of registration of offence and he was recently arrested on 3rd June 2023. Mr. Narwade, learned counsel for the complainant adopts the submissions advanced on behalf of the learned APP. He would further submit that the applicant has not only caused injuries on vital part of Vishnu but also responsible for injury to Manohar. He would invite attention of this Court to the injury certificate of Manohar alongwith his statement recorded under section 161 of Cr.PC. and submit that the applicant has assaulted two persons, as such, he has played a major role in commission of the offence. He would submit that one of the victim of the incident i.e. Ajay has lost his life and others have received injuries because of the brutal attack by the members of the unlawful assembly. Hence, he prayed to reject the application.

5. Having considered the submissions advanced, apparently the FIR names the applicant with attribution that he had inflicted blow of knife on head of Vishnu. Perusal of the injury certificate of Vishnu depicts that Vishnu had suffered simple injuries on his frontal parietal

region. The probable weapon of assault is sharp object. Although the applicant is not attributed any role in causing injury to Manohar, statement of Manohar recorded under section 164 of Cr.PC. attributes role against applicant in causing injury to him. The statements of various eye witnesses would show that the applicant is either attributed role in causing injury to Vishnu or no role is attributed against him. Therefore, the material on record is inconsistent as regards to the role played by the applicant as regards the injuries suffered by Manohar. A minute Scrutiny of the statement of Manohar shows that he attributes role against accused Sunil Palve in causing injuries to both of his hands using the sword. Further, he alleges role against Suresh in causing injuries on his head, hand using the axe. He further names the applicant as author of injury on his right hand caused by knife. Conversely, the FIR attributes role of accused Sunil only, in causing injury to Manohar.

6. Looking to the aforesaid inconsistency in statements of witnesses and the fact that the applicant is not attributed any role in causing injury to deceased – Ajay, his further detention would not be necessary, particularly when, the investigation is complete and the charge sheet is filed. Pertinently, criminal antecedents are not traceable against him. This Court has already granted bail to accused Suresh. The trial court has enlarged accused Sunil on bail. The role attributed against the applicant is more or less similar to accused persons already enlarged on bail. Hence, a case is made out for grant of bail.

ORDER

- (i) The application is allowed.

(ii) The applicant – Ganesh @ Mahesh S/o. Sunil Palve be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in Crime No. 559 of of 2022 registered with Police Station, Pathardi, Dist. Ahmednagar for the offence punishable under Sections 302, 307, 326, 120-B, 212, 143, 147, 148, 149, 504, 506 r/w. 34 of IPC, Sections 4 and 25 of the Arms Act and Section 7 of the Maharashtra Prevention of Defacement of Property Act, 1995, on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence.

[b] The applicant shall attend each and every effective date of hearing before the trial court.

[c] He shall not indulge in similar offences.

[d] It is made clear that the observations made herein above are on prima facie consideration of the material on record and only for the purpose of deciding this application.

[e] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-