

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1758 OF 2023**

**SAYED JAMIL S/O SAYED YUSUF
VERSUS
THE STATE OF MAHARASHTRA**

**AND
BAIL APPLICATION NO.1763 OF 2023**

**SAYYED FAJALU SAYYED ALI
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. N. S. Ghanekar, Advocate for the Applicants.
Mr. K. S. Patil, APP for Respondents-State.

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**AND
BAIL APPLICATION NO.1735 OF 2023**

**SAYED EHJAJ SAYED IBRAHIM
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. A. B. Jagtap, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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**AND
BAIL APPLICATION NO.1714 OF 2023**

**SAYED AKARAM SAYED AGAMIYA
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. A. R. Syed, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th OCTOBER, 2023.**

PER COURT:-

1. The applicants seek regular bail in connection with Crime No.85/2023 registered with Tadkalas Police Station,

District Parbhani dated 27.05.2023, for the offences punishable under Sections 302, 307, 324, 341, 295-A, 143, 147, 148, 149 of Indian Penal Code and Section 135 of the Maharashtra Police Act.

2. The investigation was set in motion on the basis of the information given by Gorasingh @ Sachinsingh Gurubachchan Dudhani, who alleges that on 27.05.2023 he alongwith his relative Arunsingh and Kirpalsingh had been to the village Pimpri Deshmukh with intention to catch stray pigs. When they were passing from vicinity of the Ukhalad Road, unknown persons obstructed their motorbike. The Jogindarsingh was riding the motorcycle. Suddenly some persons intercepted their motorcycle, thrown chilly powder in their eyes and thereafter, attacked on them. It is further alleged that due to such attack the informant suffered severe injuries. Arunsingh was assaulted by means of iron rod, Kirpalsingh was assaulted by fists and kicks on his abdomen. Because of assault of iron rod, Kirapalsingh became unconscious. Thereafter, someone called the police. On arrival of police, the informant and his injured companions were taken to the Civil Hospital at Parbhani, where Kirpalsingh was declared as dead. The supplementary statement of the informant was recorded, where he has given further description regarding assault. He states that the assailants were calling each other by names Rama, Fajalu, Pasha and Ehjaj. He also alleges that their turbans were removed and religious feelings were insulted. In pursuance of the aforesaid information, Crime No.85/2023 registered with Tadkalas Police Station, District Parbhani. The applicant Sayed Ehjaj has been arrested on 27.05.2023, Sayed Akaram has been arrested on 29.05.2023, Sayyed Fajalu has been arrested on 31.05.2023 and Sayed Jamil has been arrested on 14.06.2023 and since then, they are behind the bar. The investigation progressed. The charge-sheet is filed. The

applicants had moved Sessions Court for grant of bail, however, their plea is rejected. Hence, the present applications.

3. The learned Advocates appearing for the applicants would submit that initially the FIR has been registered against unknown accused persons. Thereafter, supplementary statement of the first informant is recorded, wherein he attempts to describe the accused persons on the basis of the names uttered by accused persons while calling each other. They would further submit that the statements of the eye witnesses are recorded. The names of the applicants are appearing in the statements of the alleged eye witnesses, however, the allegations are omnibus. They would submit that earlier this Court has favourably considered the prayer for grant of bail raised by co-accused and as many as four accused persons are enlarged on bail in Bail Application Nos.1628/2023 and 1407/2023. They would further submit that considering the nature of injuries suffered by the deceased, so also injured witnesses, it can be gathered that there was no intention to kill, but under misconception that the deceased and injured have entered in the village with criminal intent, the incident took place. It is further submitted that the motorcycle used by the deceased and injured persons was stolen by them and independent offence regarding theft of motorcycle has been registered against them. It is also submitted that the test identification parade relied upon by the prosecution is faulty and no credence can be given to the same.

4. The learned APP strongly opposes the prayer for grant of bail. He would submit that as many as five eye witnesses referred in charge-sheet have named the applicants to be assailants. He would further submit that a brutal attack was raised against the deceased and injured witnesses by the mob

resulting into the death of the victim. The learned APP submits that the test identification parade was carried. The injured witnesses have identified the accused persons to be assailants. Therefore, he submits that there is sufficient evidence to bring home guilt against the accused/applicants. As such, he urges to reject the prayer.

5. Having considered the submissions advanced, apparently the FIR is registered on the basis of the report of the injured against unknown assailants. In his supplementary statement dated 13.06.2023, recorded after 18 days of incident, the details of the assailants are sought to be provided on the basis of the names uttered by them while calling each other. Perusal of the charge-sheet shows that the statement of the Sayed Moujun is recorded, who claims to be an eye witness. He states that he saw Sayyed Fajalu, Sayed Ehjaj, Sayed Jamil, Rama Jumade and Pasha Khan had caught hold three Shikalkari persons. Sayyed Fajalu was holding a stick in his hand, Rama Jumade was holding iron rod, Sayed Jamil was holding wooden stick and they were assaulting victims. It is further alleged that Sayed Ehjaj, Sayed Jamil and Pasha Khan were beating them by kicks and fists, whereas Sayed Akaram was also present at the spot. The accused Sayed Akaram was saying that victims are thieves and instigating to beat them. The statements of witnesses namely Sayed Akbar, Sayed Kulasu and Sayed Sardar are also stereotyped.

6. The postmortem report depicts that the deceased had suffered abrasion and contusion on face, left eye and lower limbs. The probable cause of death is due to solid organ injury with Hemoperitoneum with Hemorrhagic shock. The test identification parade appears to have been conducted on 24.06.2023. The result

of the test identification parade shows that the injured Gorasingh identified accused Sayed Ehjaj and Sayyed Fajalu. At the same time he identified two dummy persons as accused. Similarly, injured Arunsingh identified accused Sayed Ehjaj, but also identified one dummy as an accused. The identification parade may not be much helpful for two reasons. Firstly, it lost its sanctity, as the injured witnesses have identified dummy persons as an accused and secondly, it has been recorded belatedly after arrest of the applicants. *Prima facie*, the guidelines for test identification parade appears to have been overlooked.

7. Now coming to the individual allegations against the accused persons appearing in the statements of the eye witnesses, it can be gathered that so far as accused Sayed Akaram (Bail Application No.1714/2023) is concerned, no role is attributed against him in actual assault. It is alleged that he uttered that victims are thieves and beat them. In short, he is alleged to have abated commission of crime. So far as accused Sayed Ehjaj (Bail Application No.1735/2023) is concerned, the allegations are that he was beating the victim by fists and kicks. The allegation is omnibus and does not clarify which of the victim was assaulted by the applicants. So far as the accused Sayed Jamil (Bail Application No.1758/2023) is concerned, it is alleged that he was holding a stick in his hand and omnibus allegation is made that he assaulted the victims by stick. However, in second line again it is stated that Sayed Jamil beat victims by kicks and fists. So there is inconsistency regarding role attributed against the applicant Sayed Jamil. So far as accused Sayyed Fajalu (Bail Application No.1763/2023) is concerned, he is also alleged to have holding a stick in his hand and there are general allegations that he assaulted victims. On overall consideration of the statements

of the eye witnesses, it can be gathered that all the statements are stereotyped and does not indicate natural flow of narration.

8. It can be observed that the incident itself took place due to misconception that victims have entered into village with criminal intend and large number of persons were gathered and they attacked victims. However, on *prima facie* consideration of the narration, it is difficult to hold that there was intention to cause death. After considering the aforesaid aspects of the matter, this Court has already granted bail to four co-accused persons. The investigation in the matter is completed. The charge-sheet is filed. Although, some more or less role is attributed against the each of the applicants in commission of the offence, for aforesaid observations further detention of the applicants would not be necessary. Hence, case is made out for grant of bail. Hence, following order:-

ORDER

- (i) Bail Applications are allowed.
- (ii) The applicants, Sayed Jamil Sayed Yusuf, Sayyed Fajalu Sayyed Ali, Sayed Ehjaj Sayed Ibrahim and Sayed Akaram Sayed Agamiya be released on bail in Crime No.85/2023 registered with Tadkalas Police Station, District Parbhani dated 27.05.2023, for the offences punishable under Sections 302, 307, 324, 341, 295-A, 143, 147, 148, 149 of Indian Penal Code and Section 135 of the Maharashtra Police Act on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicants shall not tamper with the prosecution evidence in any manner.
 - b. The applicants shall attend the proceedings before the Sessions Court on each and every effective date.

c. The applicants shall not establish contact with the witnesses named in the charge-sheet and shall not tamper with the prosecution evidence.

(iii) Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE