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

BAIL APPLICATION NO.841 OF 2023

Gaurav Dilip Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

VAIBHAV
RAMESH
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**WITH
INTERIM APPLICATION NO.1660 OF 2023
IN
BAIL APPLICATION NO.841 OF 2023**

Vikrant Alias Viki Vilas Jagtap ... Applicant
In the matter between
Gurav Dilip Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO.1100 OF 2023**

Kunal Alias Nanya Dashrath Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.1773 OF 2023
IN
BAIL APPLICATION NO.1100 OF 2023**

Vikrant Alias Viki Vilas Jagtap ... Applicant
In the matter between
Kunal Alias Nanya Dashrath Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO.3881 OF 2022**

Sagar Alias Ganesh Alias Depo
Balashaeb Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.408 OF 2023
IN
BAIL APPLICATION NO.3881 OF 2022

Vikram Alias Viki Vilas Jagtap ... Applicant
In the matter between
Sagar Alias Ganesh Alias Depo
Balasaheb Jagtap ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Satyam Nimbalkar with Mr. Abhishek Arote for the applicant in BA/841/2023 & BA/3881/2023.

Mr. Kuldeep Patil i/by Aadesh Konde Deshmukh for the applicant in BA/3881/2022.

Mr. Vaibhav R. Gaikwad for the applicant in BA/1100/2023.

Mr. Sharad Kulkarni with Ms. Shilpa V. Kadam for the applicant in IA/408/2023, IA/1773/2023 & IA/1660/2023.

Mr. Manoj Mohite, Senior Advocate i/by Abhijeet Gosavi for the complainant.

Ms. Rutuja Ambekar, APP for the respondent/State in BA/3881/2023 & BA/1100/2023.

Mr. Amit A. Palkar, APP for the respondent/State in BA/841/2023.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023

P.C.:

1. The applicants accused Nos.2, 3 and 5 have filed present applications seeking bail in connection with C.R. No.366 of 2022 registered with Saswad Police Station for offences punishable under sections 307, 120(B), 143, 147, 148, 149, 427, 188, 216, 504, 506 of the Indian Penal Code, 1860, and section 4(25) of the Arms Act, 1959.
2. According to the prosecution, on 9th September 2022 there was Ganapati Visarjan procession of our mandal which started at 07:00 p.m. and by 09:00 p.m. it reached at Hundekari Chowk, Saswad. At that time, the president of the Mandal, Mayur Jagtap was telling Mandal workers to take the procession forward. At that time, namely 1) Gaurav Dilip Jagtap (Applicant) 2) Kaushik Alias Aaba Rajendra Jagtap 3) Omkar Alias Hanger Dayanand Fartade 4) Sagar Alias Ganesh Alias Depo Balasaheb Jagtap (Applicant) 5) Pushkar Alias Gopya Sunil Jagtap 6) Kunal Alias Nannya Dashrat Jagtap (Applicant) had an argument and scrimmage with the President of Ganpati Mandal, Mayur Jagtap. At that time, the brother of the President namely Vikram Alias Vikki Vilas Jagtap was present there. He tried to pacify the situation. The president told that I will leave if you don't listen to me and he left the procession and went to his Vera lodging. At that time, Gaurav (Applicant) and Kaushik called someone and told the incident on phone. Someone was giving instruction to them on phone. When the aforesaid incident happened there were Arjun Jagtap, Gaurav Deshmukh, Sanket, Jagtap, Karan Jagtap, Akash Fadtare. Thereafter, the complainant along with Arjun Jagtap and Vikram

Jagtap went to Vera Lodging. At that time, Vikram Jagtap received call from Atul Ashok Jagtap (co-accused) who asked whether they want to sort out the dispute. Saying so Atul Jagtap called Vikram Jagtap to the office of Kaushik Jagtap situated at Siddheshwar Vakhar. At night at around 10:00 p.m. complainant, Vikram Jagtap and Arjun Jagtap went to the office of Kaushik Jagtap to settle the dispute. At the said office 1) Gaurav Jagtap (Applicant) 2) Kaushik Alias Abba Rajendra Jagtap 3) Omkar Alias Hanger Dayanand Fartade 4) Sagar Alias Ganesh Alias Depo Balasaheb Jagtap (Applicant) 5) Pushkar Alias Gopya Sunil Jagtap 6) Kunal Alias Nannya Dashrat Jagtap and other five to six boys were there. That time co-accused Sagar Alias Ganesh Jagtap, Kaushik Jagtap and Omkar Fartade said to Vikram Jagtap that your brother Mayur is not the president. He doesn't deserve to be president, your brother has become arrogant and today we will finish one of you saying they assaulted Vikram, the complainant and others. Omkar Fartade assaulted Vikram Jagtap with some sharp weapon. Gaurav Jagtap (Applicant), Kaushik Jagtap assaulted with cricket bat and Sagar Jagtap (Applicant), Pushkar Jagtap, Kunal Jagtap (Applicant) assaulted with stick and others assaulted with fists and kicks. After hearing the shouting, people around the vicinity gathered to the spot and seeing the crowd accused persons ran away with their two wheeler bike and four wheeler car. Vikram Jagtap was injured and was laying unconscious. The injured Vikram Jagtap was taken initially to Chintamani Hospital and after the primary medication he was referred to Noble Hospital.

While Vikram was receiving treatment at Chintamani

Hospital at Saswad, relative of the complainant namely Vimal Vilas Jagtap called the complainant and told him that after the incident of Hundekari Chowk 1) Gaurav Dilip Jagtap (Applicant) 2) Kaushik Alias Abba Rajendra Jagtap 3) Omkar Alias Hanger Dayanand Fartade 4) Sagar Alias Ganesh Alias Depo Balasaheb Jagtap 5) Pushkar Alias Gopya Sunil Jagtap 6) Kunal Alias Nannya Dashrat Jagtap came to the relative's house and shouted and created ruckus saying that where is your children Mayur and Vicky and they will finish them today. The relative and mother of the complainant asked them what has happened to which they verbally abused them and broke the back glass of Innova car Bearing No.MH12PT6665. During the same, it is alleged that Kaushik Jagtap was telling someone on call that he has broken the glasses of car.

3. The applicants were arrested on 23rd September 2022. The investigating agency seized weapons and vehicles used by the accused for commission of offences. After completion of investigation charge-sheet was filed.

4. The applicants filed application before the Sessions Judge which came to be rejected.

5. Learned advocates for the applicants submitted that the applicants are falsely implicated. According to the applicants, there is no recovery of weapons or blood stains clothes. There are no antecedents to the discredit of the applicants. Role attributed to accused No.2 is assault by cricket bat. Role attributed to accused Nos.3 and 5 is assault by wooden stick. The applicants were

arrested on 23rd September 2022. Co-accused Atul Jagtap was released on bail. It is unlikely that the trial will be completed in near future; therefore, the applicants are entitled to relief under section 439 of the Criminal Procedure Code, 1973.

6. Per contra, learned APP and learned Senior Advocate for the victim submitted that the applicants were active in the assault. Considering role attributed to Atul Jagtap who had not participated in the actual incident, the applicants cannot claim parity as there is active participation of the applicants in the assault. The medical condition of the victim was critical. His skull is removed. There is no proper cover to the brain. The chin of victim is impede. He cannot hear properly and cannot speak clearly. Victim and witnesses are residing in the same area. Therefore, there is every possibility of tampering of evidence.

7. On perusal of the charge-sheet and other material on record, it appears that specific role is attributed to each applicant. Role attributed to accused No.2 is assault by cricket bat and accused Nos.3 and 5 is assault by wooden stick. The injured eye-witness and another eye-witness have seen the incident and have attributed specific role to the applicants. Therefore, prima facie active participation of the applicants in the assault is clear.

8. The victim was brutally assaulted. The victim sustained grievous injuries on his head. The injury certificate issued by Noble Hospital, Pune is as under:

Sr. No.	Type of Injury	Site of Injury	Nature of Injury	Cause of Injury
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1.	Saturated Wound	Occipital Region	Simple	Hard and Blunt Object
2.	Acute Inter Parenchymal Hemorrhage	Brain	Grievous	Hard and Blunt Object
3.	Subarachnoid Hemorrhage	Brain	Grievous	Hard and Blunt Object
4.	Acute Subdural Hemorrhage	Brain	Grievous	Hard and Blunt Object
5.	Midline Shift to right side – 7.3 mm	Brain	Grievous	Hard and Blunt Object
6.	Fracture	Left Parietal bone & Right frontal bone	Grievous	Hard and Blunt Object

9. It is, therefore, evident that the assailants mounted attack on head of the victim. The victim needs to be operated for removal of part of his skull. According to medical reports, victim needs skull reconstruction. He has paresthesia in right upper and lower limb. He is suffering from fissure-in-ano due to prolonged inactivity. Victim has suffered severe traumatic brain injury. He is still recovering from the said injury.

10. Considering the manner of brutal assault and the injury suffered by the victim, it is a matter of luck that the victim escaped the death. On the basis of said injuries, offence under section 307 has been invoked against the applicants. The applicants are attributed role of assault by using cricket bat and wooden stick.

11. Any act done with intention or knowledge that if by that act,

death would be caused, a person should be guilty of murder and it is made punishable under section 307 with imprisonment of such description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, offender shall be liable either to imprisonment for life, or upto ten years. For the purposes of section 307, it is not necessary that bodily injury capable of causing death should be inflicted. If the intention is to cause death and if there is knowledge that such an act would cause death, section 307 gets attracted.

12. In the present case the assault is in the head, a vital portion of body. The injury certificate indicates that the injuries are by hard and blunt object which are possible by cricket bat and wooden stick. Therefore, such assault leads to prima facie inference that the applicants possess both intention and knowledge. Whether it would entail punishment of imprisonment for a term, which may extend to ten years or imprisonment for life, is a matter of trial. However, the applicants have assaulted the victim resulting into injuries on his head as described above. The intention and knowledge to commit offence under section 307 is prima facie established in the form of material contained in the charge sheet including medical evidence. The description of incident by both the eye-witnesses indicate premeditation. The applicants came along with other two assailants who assaulted deceased with sickle and sharp edged weapon. Before the incident the applicants along with other co-accused were searching the victim. The applicants were carrying the weapons even before the incident.

13. In so far as role of co-accused Atul Jagtap who is released on bail is concerned, he did not participate in the assault. Allegations against him is that he made a phone call to the victim and called him at the spot. In absence of participation in the assault, the applicants who are attributed active role in assault cannot claim parity. Therefore, the applicants do not deserve to be released on bail.

14. The bail applications are, therefore, rejected.

15. In view of disposal of bail applications, nothing survive in the interim applications. The same are disposed of.

(AMIT BORKAR, J.)