

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

BAIL APPLICATION NO. 571 OF 2023

Ganesh Jagdish More	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Raju Suryawanshi - Advocate for the Applicant
Mr. S. R. Agarkar - APP for the Respondent-State
API Shrikant Jadhav – Shahapur Police Station.

CORAM : S. M. MODAK, J.

DATE : 23rd JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. Officer is present.

2. Admittedly, till the time, statement of one Smt. Kalpana Khupse is recorded on 28/08/2022, it is after F.I.R. dated 26/08/2022, the name of the present Applicant is not disclosed as one of the assailant/participant. It is first time on 28/08/2022, the witness Kalpana Khupse has stated the name of the this Applicant.

He came in Wagon-R car alongwith Jayesh Dukare and others and there was Bolero car also. After that the deceased-Dilip who is

brother-in-law of the witness Kalpana Khupse came there.

3. This incident took place on 22/08/2022 in the village Andad, Taluka Shahapur, District Thane. It is in the intervening night of 21/08/2022 and 22/08/2022. Two persons were trying to search a tempo near the house of this witness Kalpana Khupse. It was for the reason that there was theft on the site of the Samruddhi Mahamarg and one Dinesh Khupse has broken the glass of his Bolero vehicle. Few of them went to the house of the Police Patil, who is Baliram Mirkute. Even Baliram tried to convince both the parties that is one headed by Kailash Shelke and another Dinesh Khupse. Kailash has tried to pacify other group. However quarrel in between the deceased Dilip and Kailash Shelke could not be avoided.

4. Thereafter, deceased-Dilip was assaulted with the help of weapons like choppers, wooden rods and others. The said-Dilip succumbed to the injuries. There is F.I.R. by Dinesh Khupse on 26/08/2022, it is registered with Shahapur Police Station, at page no. 216.

5. Learned APP submitted that the Applicant is certainly liable as per provision of the vicarious liability as contemplated under Section 149 of the Indian Penal Code. Admittedly, none of the

witnesses statements are pointed out which mentions that except presence at the spot the present Applicant has played any role. There is no recovery at his instance.

6. At this stage, we have to see whether further detention is warranted by the materials and fastening of criminal liability under Section 149 of the Indian Penal Code can be decided at the time of the trial. Hence case is made out for bail.

7. In addition to that there is a counter F.I.R. at page no. 280 filed by this Yogesh Chavan with the same Police Station under Sections 323, 324 read with 34 of the Indian Penal Code and Police Patil Baliram Mirkute, first informant Dinesh and others are the accused persons.

8. Learned Advocate Shri Suryawanshi pointed out that there is no reference of the present Applicant being present at the spot. This is an additional factor. Case for bail is made out.

ORDER

- (i) Bail application is allowed.
- (ii) Applicant-Ganesh Jagdish More arrested in connection with C.R. No. 348 of 2022 registered with Shahapur Police Station for the offence punishable

under Sections 302, 307, 324, 323, 341, 143, 144, 148, 149 of the Indian Penal Code and under Sections 37(1)(3), 135 of the Maharashtra Police Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 25,000/-.

- (iii) Applicant shall not threaten the prosecution witnesses.
- (iv) The Applicant shall regularly attend the proceedings before the trial Court.
- (v) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after notice.

9. It is made clear that the these are my *prima facie* observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

10. Application is disposed of in the aforesaid terms.

11. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]