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

BAIL APPLICATION NO.4027 OF 2021

Vilas @ Bhau Madhukar Khaire ...Applicant

vs.

The State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.2910 OF 2022
IN
BAIL APPLICATION NO.4027 OF 2021**

Ajay Motiram Patil ...Applicant

In the matter between

Vilas @ Bhau Madhukar Khaire ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Sudeep Pasbola with Mr. Ayush Pasbola with Ms. Divya Singh
with Ms. Shanvi Khot for the Applicant in BA No.4027/2021.
Mr. R. D. Suryawanshi for the Applicant in IA No.2910/2022.
Ms. Veera Shinde APP for the Respondent - State.

CORAM : S. M. MODAK, J.

DATED : 20TH MARCH 2023

P.C. :

1. Heard learned Advocate for the Applicant, learned Advocate for the first informant and learned APP for the State.
2. One Rakesh Patil was murdered by several persons on 28th October 2020, at about 5.30 pm. on the site of one building by name Jainam Residency, Ambarnath. One builder by name Hiren Patel has constructed that building. The deceased along with his brothers consisting of the first informant Ajay, Ravikant, Vijay, were running business of supplying of building materials by name "Shivdarshan Building Material Supplier". They were also taking contracts relating to erection of grills and supplying internet and cable connection. The said Hiren Patel has awarded contract of erection of grills to that Jainam Residency to the said Shivdarshan Building Material Suppliers.
3. On 28th October 2020, the first informant-Ajay Patil, deceased – Rakesh Patil and others have gone to the site of Jainam Residency. The arrested accused D Mohan called deceased-Rakesh Patil, therefore Rakesh Patil went towards D Mohan with the first informant and other. D Mohan told him

that incomplete work be done by them. D Mohan also threatened deceased-Rakesh. Thereafter, the assault took place and deceased was assaulted by means of knife and other weapons. There were also other injured persons.

4. The deceased was taken first to Balaji hospital, Ulhasnagar and then to Fortis hospital, Kalyan. The assailants ran away in one Scorpio vehicle and another vehicle. The police at Shivaji Nagar police station registered an offence under sections 302, 324, 323, 120-B, 504, 143, 147, 148, 149 of IPC, section 37(1) and 135 of the Maharashtra Police Act and under section 4 and 27 of the Arms Act.

5. During investigation, the Applicant was arrested and now the charge-sheet is filed. According to learned Advocate Mr.Pasbola, present Applicant is not the assailant. Though accused is named by the first informant in supplementary statement, it was recorded on 4th November 2020. There are CCTV footages collected from cameras installed at Jainam Residency. The seizure panchnama is there on page 237. The eye witness Ravi Patil has identified certain accused persons on

the basis of names and they are identified on the basis of different clothes that were worn at the time of incident. According to him, amongst them the Applicant does not fits into any catagory.

6. He submitted that there are statement of witnesses. They are as follows

--Ashish Singh,

--Tushar Rokade

--Sachin Mhadvi and

--Bhavesh Patil.

Amongst them, witness Tushar Rokade, Sachin Patil and Sachin Mhadvi have identified the present Applicant in parade. The test identification parade panchnama is at page 660. According to him, proper procedure for conducting parade as per Criminal Manual is not followed.

7. There is panchnama about verification of mobile belonging to this Applicant. According to the prosecution some of the accused by name D Mohan and Bharat Patil have made calls to other persons. According to him, it is not present Applicant, who

has called others and there is not material that the mobile was possessed by the Applicant.

8. Learned APP submitted that eye witnesses and the first informant has given description of assault. Some of the assailants are described by names. Some of the assailants are described by clothes they had worn and some are unknown even were not described in either of way. They have been identified. It is submitted that from the footage collected from CCTV cameras installed at Red Chilly Dhaba, the Applicant alongwith accused D Mohan are shown and that is just prior to happening of the incident. She also relied upon post offence incident about mobile of the Applicant used by co-accused. There is seizure panchnama of this mobile from person of the Applicant.

9. She also submitted that there are call detail reports collected which suggest presence of the Applicant in an around the spot at the time of incident.

10. Learned Advocate for the first informant invited my attention to the statement on record of the owner of Red Chilly Dhaba. He has heard utterances by a person, who had worn blue

colour T-shirt thereby stating about elimination of one Patil.

There is also statement of customer by name Daniel Pillai, who was present in that hotel.

11. Considering above materials, it reveals that the Applicant is named in supplementary statement by the first informant. Amongst these materials, certain materials do supports the case of prosecution. Whereas there are certain lacunas in some of materials collected on behalf of the prosecution. So to say the witnesses who has identified the present Applicant in the parade, in their statements before the police have described some of the assailants wearing particular clothes. The prosecution does not say that the present Applicant had worn some of the clothes. It is true that the parade panchnama was not carried in the manner which is generally followed.

12. Even though it may be true, I am not inclined to grant bail to the Applicant for the reason that he has been named in supplementary statement. Furthermore, as per call details report, his location is in and around the spot. His presence is visible in CCTV footage collected from the said Red Chilly Dhaba.

At this stage, we can believe material about use of mobile handset belonging to the Applicant by co-accused. This mobile is seized from the Applicant. So there is involvement of the Applicant in this offence. Hence, the Bail Application is rejected. Interim Application is disposed of accordingly.

[S. M. MODAK, J.]