

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

**CRIMINAL BAIL APPLICATION NO. 2456 OF 2022**

Prasad Kailas Thombare

....Applicant

**Versus**

The State of Maharashtra

....Respondent

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Ms. Sana Raees Khan a/w Mr. Aditya Parmar for the Applicant.  
Mr. Y. Y. Dabke, APP, for the Respondent-State.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 13<sup>th</sup> SEPTEMBER 2023.**

**P.C. :**

1. By this application, applicant is seeking bail in C.R. No. 529 of 2021 registered with Wakad Police Station, Pune for offences punishable under Sections 302, 504, 506, 120-B, 201 read with 34 of Indian Penal Code, 1860 (for short "IPC") and Sections 4(25), (27) of Arms Act, 1959 and Sections 37(1), 135, 142 of Maharashtra Police Act, 1951 and Section 7 of the Criminal Law Amendment Act, 2013.

2. It is prosecution's case that on 27<sup>th</sup> June 2021, at about 06.15 p.m when complainant was at his home, he heard commotion

outside his house. He came out of his house and saw that his brother-in-law Nishant was assaulted by the applicant, co-accused Kunal Mokashi and Sahil Kumbhar with scythe. While assaulting with scythe, they all were abusing and they threatened the crowd gathered there of dire consequences, if they intervened. Because of threatening, all persons standing there ran away. The friends of Nishant also ran away. Thereafter, applicant and co-accused sat in Maruti Car and left the spot. When complainant reached near Nishant, he saw that Nishant was seriously injured. There were injuries of scythe on his forehead, both hands, his left hand palm was half cut. Nishant was admitted in hospital. When Nishant was being taken to hospital, at that time, Nishant told to the complainant that some days prior to the incident, he had assaulted the applicant and to take revenge of it, they assaulted him. Nishant died while taking treatment. On the report of the complainant, FIR was lodged against the applicant and co-accused.

3. It is contention of learned counsel for the applicant that applicant has been falsely implicated in this case. The statements of Nishant Patil, Ganesh Gotal, Adarsh Gund and Mukesh Mhaske who

are eye witnesses and friends of Nishant. In their statements they have stated that at the time of incident applicant was sitting in car and he had given scythe to the co-accused Kunal. There was no overt act of the applicant. There is no recovery at the instance of applicant. There is ten hours delay in lodging the complaint. Learned counsel further submits that when deceased was admitted in hospital at that time history was given that he was assaulted by 7 to 10 persons, which contradicts complainant report. Applicant is behind bar for more than two years . Hence, requested to allow the application.

She relied on *A. Kadar Mujawar vs. State of Maharashtra (2010) 15 SCC 131*, *Mangesh Sakkarpani Kondar vs. The Senior Inspector of Police & Anr. Passed ( BA/1959/2021 ) by this Court (Coram: Smt. Anuja Prabhudessai, J) by order dated 25<sup>th</sup> March, 2022 and Viji & Anr vs. State of Karnataka (20<sup>th</sup> October 2008) CA/296/2006*,

4. Learned APP submitted that the said incident had happened due to dispute between applicant and deceased on the earlier day i.e. on 26<sup>th</sup> June, 2021. There was quarrel between the applicant and deceased and to take revenge of it, applicant had come

with other co-accused and assaulted the deceased with scythe. There is *prima facie* case against the applicant, when co-accused Kunal got down from the car, he asked deceased and eye witness regarding assault on the applicant which was took place on 26/06/2021 and on that basis quarrel started. It shows there was involvement of the applicant in the said crime. Complainant has seen that applicant was assaulting deceased with scythe. Hence, requested to reject the application.

5. I have heard both learned counsel. Perused FIR and charge-sheet.

6. In FIR, allegations against the applicant are that he along with co-accused assaulted deceased with scythe. In the statement of eye witnesses, they have stated that applicant was sitting in the car and he gave scythe to accused Kunal Mokashi and by taking that scythe, accused Kunal Mokashi assaulted deceased. It appears from the statement of eye witnesses, who are friends of the deceased that on earlier day of the incident, quarrel had taken place between applicant and deceased, on that account, applicant came with co-

accused and assaulted the deceased. From record it appears that applicant is main culprit, as he wanted to take revenge, he assaulted deceased with co-accused.

It is contention of learned counsel for applicant that in statement of eye witnesses, role attributed to applicant is that, at the time of incident he was sitting in car and he had handed over scythe to accused Kunal, by taking that scythe Kunal assaulted the deceased, it shows applicant had not assaulted the deceased.

In my view, from record it appears that applicant had intention to kill deceased, as he had carried scythe in his car and he handed over it to the co-accused to assault the deceased. The injuries sustained by deceased shows that assault was so brutal, that half palm of left hand of deceased was cut in said assault. In statement of complainant and witness Seema Gaikwad, they have stated that they saw applicant was assaulting deceased with scythe. Though there is delay of 10 hours for lodging complaint, it can not be the ground to grant bail to the applicant, when there is prima facie case against applicant. Moreover after assault deceased was admitted in hospital, it could be a ground for delay in lodging FIR. In MLC, report it is mentioned that 7 to 10 persons had assaulted the deceased, but

witnessed by eye witnesses. Their statement prevails over the MLC report. It appears from record that applicant was instrumental in assaulting the deceased. There is strong *prima facie* case against the applicant.

7. I have gone through the case laws cited by the learned counsel for the applicant. The facts of cited and the facts of present case are different. Hence, would not applicable to the present case. It appears from record that on the earlier day of the incident, quarrel had taken place between applicant and deceased and to take revenge of it, applicant with co-accused brutally assaulted the deceased with scythe.

8. In view of above, I pass following order.

**ORDER**

I. Application is rejected.

(SHIVKUMAR DIGE, J.)