

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

BAIL APPLICATION NO. 3074 OF 2022

Mahesh @ Maya Dilip Gunjal	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Siddhesh Bhole i/by Mr. Arjun S. Thakur - Advocate for the Applicant

Mr. S. R. Agarkar - APP for the Respondent-State
PSI Keshav V. Hasgule, Dombivali Police Station

CORAM : S. M. MODAK, J.

DATE : 06th JUNE, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. Investigating officer is present.
2. Bail is asked for on the ground that the charge sheet papers does not *prima-facie* discloses an offence under Sections 302 of the Indian Penal Code, apparently there is no motive, the incident has not happened entirely in the manner alleged in the F.I.R. and on the ground of parity. co-accused Jayesh Ashok Julve @ Juwale is released on bail by this Court in Bail Application No. 785 of 2022.
3. As against this, grant of bail is opposed for the reason

that there are statements of the eye witnesses, coupled with recovery of the iron rod at the instance of the present Applicant and offence under Section 302 of the Indian Penal Code is very much disclosed. Learned APP tried to differentiate in between the role alleged against the present Applicant and against the co-accused-Jayesh Ashok Julve @Juwale.

4. After perusing the charge-sheet following are the materials relied upon by the prosecution:-

- a) The F.I.R. is lodged by an eye witness Raju Dhotre alleging the presence of the Applicant at the spot, possessing the weapon iron rod and specific allegation of using that iron rod for assaulting the deceased.
- b) There is statement of eye witness who is Santosh Lashkar, brother-in-law of the first informant.
- c) Statements recorded under Section 164 of two eye witnesses and others.
- d) Recovery of the iron rod and clothes at the instance of the present Applicant.
- e) Post-mortem report suggesting injury on the scalp at mid occipital region. It is mentioned in the column no. 19, page no. 106.

5. The incident took place on the intervening night of the 17th September 2020 and 18th September 2020 near Pragati College Dombivali. The first informant-Raju accompanied by his brother-in-law Santosh Lashkar and the deceased-Shivaji Khandagale had gone near Pragati College. Earlier to this incident there was one incident of giving of abuses by the Applicant to the first informant. It was told to first informant-Raju by his maternal grand son-Aniket Nalawade. As such first informant-Raju was not knowing the Applicant-Mahesh.

6. Out of the curiosity, he has collected mobile number of the Applicant- Mahesh from one Rohit and then called the Applicant. The Applicant by way of reply started abusing the first informant, his attempt to pacify him was not successful. The first informant was called by the Applicant in a lane near Pragati College.

7. The Applicant was accompanied by Nikhil Mane, Jayesh Jawle (granted bail by this Court), Ashish Walmiki and Appa Sugala. When the first informant tried to interact with the Applicant, the Applicant and his associates started beating the first informant, the said Santosh Lashkar and the deceased-Shivaji. The first informant further mentions about weapons possessed by the accused persons. The present Applicant possessed iron rod.

8. Further allegation is that all of them assaulted the deceased and two others. When the deceased falls on the ground, again he was assaulted and Applicant- Mahesh and Nikhil Mane have assaulted the deceased with a help of iron rod. He has received injuries on his head and he has fallen down. The assailants ran away. Due to injuries, Shivaji died and Police have registered an offence at Dombivali Police Station under Sections 302, 324, 323, 504, 506, 141, 143, 147, 148 and 149 of the Indian Penal Code.

9. I have also read the statement given by the brother-in-law Santosh Lashkar. Their statements recorded under Section 164 are on page no. 215 - Deepak Mhadse, on page no. 219-the first informant and on page no. 224-witness Santosh Lashkar.

10. It is true that first informant-Raju has stated about giving of the abuses by the Applicant and his associates, even further he has said that the Applicant slapped him. He further states that Applicant and his associates assaulted them with the help of the iron rods and stumps.

11. It is true that this Court has granted bail to co-accused Jayesh Ashok Julve @ Juwale, I have read that order. Witness Santosh Lashkar has not received any injuries and this Court has

noted role assigned to the accused-Jayesh and it is that of assaulting Santosh, predominantly, this is main reason for grant him bail. It is true that the witness-Santosh has not received any injuries. His certificate is on page no. 198. Whereas first informant- Raju has received few of the simple injuries.

12. In order to ascertain whether role of the Jayesh and the present Applicant is similar, when I have perused the papers, it reveals that role alleged against them is not similar. Merely because they are possessing different weapons that is to say iron rod and stump, it does not make any difference. What is important is nature of allegation. There is specific allegation that the Applicant bet the deceased with the help of iron rod. This allegation makes the case of the Applicant different from the said Jayesh.

13. I do not think that the Applicant is entitled for bail. There may be variances in the statements recorded under Section 161/FIR and statement recorded under Section 164 of the Criminal Procedure Code. But we are not appreciating evidence at this stage. We have to take overview of the situation by reading them as it is. The case involves the direct evidence in the form of the statement of the eye witnesses. Whether there is motive or not or whether it is sufficient

or not, it is immaterial at this stage.

14. I do not think the contention raised that offence under Section 302 of the Indian Penal Code is not disclosed can be considered at this stage. So I do not think the case is made out for grant of bail.

15. The Applicant is behind bar since 2020. At the most it can be observed that if the trial will not start within a period of one year, the Applicant can be granted liberty to apply bail a fresh.

16. 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.

17. Bail application is dismissed.

18. Let concerned Court be informed about this order.

[S. M. MODAK, J.]