

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2892 OF 2023

Phakkad Dattu Malwade ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Priyal Sarda for the Applicant.

Ms. A.S. Pai, PP alongwith Mr. S.V. Gavand, APP for the State.

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CORAM : N.R. BORKAR, J.

DATED : 16 OCTOBER 2023

P.C. :-

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail.

2. The applicant came to be arrested in Crime No. 381 of 2021 registered at Shirur Police Station, Pune for the offences punishable under Sections 302, 307, 109, 143, 147, 148, 149, 269 and 188 of Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 2, 3, 4 of the Epidemic Act, 1897.

3. I have heard the learned Counsel for the applicant and the learned APP for the State.

4. There was a dispute between the family of the applicant and the family of the deceased on account of ownership of agricultural land. According to the prosecution, on account of the said dispute, on 31 May 2021, the present applicant and other co-accused formed an unlawful

assembly and assaulted the deceased and his family members by axe and sticks.

5. The learned Counsel for the applicant submits that on 15 March 2023, at the time of hearing of first bail application filed by the applicant, a statement was made on behalf of the prosecution that the trial would be over within four to five months. It is submitted that in view of the said statement, the bail application filed by the applicant was not entertained and liberty was granted to file fresh bail application after six months if in the event trial is not concluded. The learned Counsel for the applicant submits that the trial is still at the stage of recording evidence and not likely to conclude in near future.

6. On the other hand, the learned PP submits that the trial could not be concluded due to repeated adjournments sought by the accused and filing of transfer application.

7. I have perused the order passed by this Court dated 15 March 2023 in Bail Application No.2902 of 2022 filed by the applicant, which reads thus :

“The learned PP submits that the trial is fixed for recording evidence on 5 April 2023 and is likely to be over within four to five months. Considering these facts, I am not inclined to entertain the present application. If the trial is not concluded within a period of six months, the applicant is at liberty to file an application for bail

2. Application is disposed of.”

8. The filing of transfer application is not disputed. In that view of the matter, I am not inclined to release the applicant on bail on the ground of non-conclusion of trial.

9. The learned Counsel for the applicant in the alternative submits that the trial court has released similarly circumstanced co-accused - Abhijit Malvade on bail and thus applicant is entitled to be released on bail on the ground of parity.

10. I have perused the order of the trial court. The ground of parity was raised, however, the trial court has not accepted it.

11. I have perused the statement of eye-witnesses. More serious role is attributed to the present applicant, than the co-accused with whom the parity is sought. Considering the nature of offence, I am not inclined to release the applicant on bail.

12. Bail application stands rejected.

(N.R. BORKAR, J.)