



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

ANTICIPATORY BAIL APPLICATION NO. 2902 OF 2023

Akshay Bhimrao Patil ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Tanaji Mhatugade, for the Applicant.
Smt. Ashwini Takalkar, APP for the State/Respondent.

**CORAM: N. J. JAMADAR, J.
DATED: 18th OCTOBER, 2023**

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.420 of 2022, registered with Tasgaon Police Station, Sangli, for the offences punishable under Sections 302, 504, 506, 143, 147, 148 and 149 of Indian Penal Code, 1860 ("the Penal Code"), Section 135 of the Maharashtra Police Act, 1951 and Sections 4 and 25 of the Arms Act, 1959.
3. The first informant lodged a report with the allegation that on 4th August, 2022 on account of an altercation which had occurred in the afternoon, accused Kamlesh Tambekar, Sagar Kadam, Sohan Dhanawade, Pawan Dhanawade, Suhas

Adsul and Shital Patil and their associates accosted the first informant's father. The co-accused were armed with weapons like knife, sword, sword stick and iron rod. Kamlesh Tambekar gave a blow by means of knife on the back of the first informant's father. The other accused also assaulted the first informant's father by means of respective weapons and fist and kick blows. When the first informant and others tried to go to the rescue of his father, co-accused Suhas Adsul threatened them by brandishing the sword. The first informant's father was shifted to hospital but he succumbed to the injuries.

4. In the FIR the applicant was not named. In the supplementary statement recorded on the following day, the first informant named the applicant as the person who was also a member of the unlawful assembly alongwith named accused. He was attributed the role of assault by fist and kick blows. After the deceased was assaulted by deadly weapons and fell down, the applicant proclaimed "game over".

5. Apprehending arrest, the applicant has preferred this application.

6. The learned Counsel for the applicant submitted that the applicant was not named as the member of the unlawful

assembly in the FIR. Even in the supplementary statement the role of assault by means of any weapon has not been attributed to the applicant. The first informant alleged that the applicant had given exhortation. Therefore, the custodial interrogation of the applicant is not warranted. Hence, the applicant deserves to be enlarged on pre-arrest bail.

7. The learned APP resisted the application. It was submitted that the deceased was brutally assaulted by multiple assailants, armed with deadly weapons. The material on record indicates that the applicant was very much a member of the unlawful assembly and shared the common object to commit the murder of the deceased. Having regard to the gravity of the offence and the circumstances of the case, according to the learned APP, the applicant does not deserve the discretionary relief of the pre-arrest bail.

8. I have perused the allegations in the FIR and the material on record. It is true the applicant was not specifically named in the FIR. In the supplementary statement also the role of assault by fist and kick blows and exhorting the co-accused has been attributed to the

applicant. However, the fact that the applicant was allegedly a member of the unlawful assembly cannot be lost sight of.

9. *Prima facie*, the deceased was killed in prosecution of the common object of the unlawful assembly, the members of which were armed with deadly weapons. It is well recognized the common object of the unlawful assembly has to be inferred from the weapons used, the nature of the assault, the acts and utterances of the members of unlawful assembly. Therefore, the mere fact that the applicant was not armed with any weapon by itself is not determinative. Once a person is shown to be a member of unlawful assembly and offences are committed in prosecution of the common object of the unlawful assembly, absence of an overt act is not by itself sufficient not to invoke the principle of constructive criminality envisaged by Section 149 of the Penal Code.

10. In the case at hand there is material to show that after the deceased was brutally assaulted, the applicant allegedly proclaimed, “work accomplished.....game over”. These utterances *prima facie* show that the applicant also shared the common object.

11. The learned Counsel for the applicant made an endeavour to bank upon an order passed by this Court in

Bail Application No.800/2023 dated 20th July, 2023, whereby this Court was persuaded to release co-accused Himmat Dhanawade on bail. I am unable to persuade myself to accede to the aforesaid submission of parity as the co-accused was released on bail after arrest. The principle of parity thus cannot be invoked.

12. Having regard to the gravity of the offence and the likelihood of tampering with the evidence and threatening the witnesses, I am not inclined to exercise the discretion in favour of the applicant.

13. Hence, the following order:

: O R D E R :

- (i) The application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]