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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 911 OF 2024

**RAMESHWAR RAJARAM WADIKAR
VERSUS
THE STATE OF MAHARASHTRA.**

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Mr. S.S. Rathi, Advocate for applicant
Mr. K.B. Jadhavar, APP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 16th JULY, 2024.

ORDER :-

1. The applicant seeks bail in connection with Crime No. 62 of 2023 dated 11.4.2023 registered with Palam Police Station, Dist. Parbhani for the offences punishable under Section 302 r/w. 34 of IPC.

2. The investigation was set in motion on the basis of complaint filed by Shashmalabai w/o. Shivaji Wadikar, alleging that at about 9.30 p.m., her nephew Govind Wadikar called her and her husband. They arrived on the road where they found that Rajabhau was lying in front of the house of Balaji Wadikar. The blood was oozing from his head and he was undressed. The legs were tied by pant. The accused persons were present on spot holding bamboo sticks in their hand. When she asked as to who caused injury to her son, the accused Somnath, Rameshwar and Nagesh admitted that they are the authors of the

injuries. Then accused Somnath and Ramesh called an auto rickshaw and took them to hospital. Accused Somnath followed them on motorcycle. When they reached to the hospital of Dr. Shinde, he examined Rajabhau, and advised to carry forward him to Civil Hospital. Thereafter, accused persons ran away. She further alleges that deceased had suffered injury on head and right eye-brow, attributable to sharp weapon. The Doctors at Civil Hospital declared him dead. She alleges that her son Rajabhau and accused persons had quarrel on some reason. Consequently, they assaulted him resulting to his death.

3. In pursuance of the aforesaid complaint, the investigation progressed. The applicant came to be arrested on 11.4.2023. Since then, he is behind bars. His previous bail application was rejected by the Sessions Court on 7.8.2023. Thereafter, he approached this Court vide Bail Application No. 1530 of 2023. However, same was withdrawn with liberty to move afresh in case trial could not be concluded within a period of six months.

4. Mr. S.S. Rathi, learned advocate for the applicant submits that FIR was lodged on hear-say information. However, during the course of investigation, the statement of alleged eye witnesses have been recorded. He invites attention of this Court to the statement of Shivraj Made, who states that on 10.4.2023, at about 9.30 p.m., he heard commotion in the field and saw that accused Somnath, Rameshwar and Nagesh were assaulting deceased Rajabhau. Somnath was holding wooden raft and Nagesh was holding stick. Similarly, statement of Shubham Wadikar shows that accused Somnath and Nagesh were holding weapons in hand and they were assaulting the deceased. The

investigation papers further show that although clothes of the applicant have been recovered during course of investigation, but no blood stains were seen. Conversely, blood stains were found on the clothes of co-accused persons. There is no recovery of incriminating material under Section 27 of the Evidence Act from the applicant.

5. Per contra, learned APP vehemently opposes the application on the ground that offence is serious and there is sufficient material to show role of the applicant in the incident.

6. On prima facie consideration of the material available on record, although presence of the applicant can be seen alongwith other accused at the time of incident, apparently, he was not holding any weapon in hand. He cannot be attributed to be author of the fatal injuries suffered by the deceased. The co-accused were holding weapon. Applicant was not seen with weapon or no incriminating material was seized from him. No criminal antecedents are at discredit of the applicant. He is behind bars for more than 15 months. The trial has not yet commenced and would take its own course. In that view of the matter, further incarceration of the applicant would not be necessary. So far interest of the prosecution is concerned, it can be secured by putting stringent conditions. Hence, a case is made out for grant of bail. Hence, the following order :-

: O R D E R :

[i] The application is allowed.

[ii] The applicant – Rameshwar Rajaram Wadikar be released on bail in connection with crime No. 62 of 2023, registered at Palam Police Station, District Parbhani, for the offence punishable under Sections 302

r/w 34 of IPC, on his furnishing PB. and S.B. in the sum of Rs. 50,000/- (rupees fifty thousand only) with one solvent surety in the like amount.

[iii] The applicant shall not tamper with the prosecution evidence.

[iv] The applicant shall attend each and every date in the Sessions Case before the trial court and cooperate for early disposal.

[v] The applicant shall not enter Palam Taluka, District Parbhani, till conclusion of Sessions Trial.

[vii] The application is accordingly disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-