

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

**INTERIM APPLICATION NO.3295 OF 2023
IN
CRIMINAL APPEAL NO.692 OF 2016**

Sanjay Ashok NagareApplicant
Versus
State of Maharashtra Respondent

Ms. Shubhada Khot, Advocate a/w. Danish Patil, Anthony Nadar
for the Applicant.

Smt. M.H. Mhatre, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL AND
SHIVKUMAR DIGE, JJ.**

DATE : 08th FEBRUARY, 2024

P.C. :

1. The Applicant is seeking his release on bail during pendency of Criminal Appeal No.692/2016. This is the fourth time that the Applicant is approaching this Court for his release on bail. On the first occasion, he had preferred Criminal Application No.724/2017. It was rejected vide order dated 11.9.2017. It was observed in that order that the evidence of PW-11 Mangesh Dattu Jadhav was important. He was an eye

witness and the brother of the deceased. He is attributed the specific role to the Applicant that the Applicant had assaulted the deceased with a sword. The medical report corroborated the injuries. With these reasons, the Application was rejected.

2. Thereafter the Applicant again preferred Interim Application No.252/2021, which was withdrawn as recorded in the order dated 4.2.2021. On the third occasion, the Applicant preferred Interim Application No.2451/2022. It was also rejected because there was no change in circumstance. That order was passed on 3.1.2023.

3. Thereafter after more than one year the present Application is filed mainly on the ground of long incarceration as well as on certain points of merits.

4. We have heard Ms. Shubhada Khot, learned counsel for the Applicant and Smt. M.H. Mhatre, learned APP for the Respondent-State.

5. The Applicant is the original accused No.2 in Sessions Case No.303/2014 before the Additional Sessions

Judge, Nashik. The learned Judge vide her judgment and order dated 19.9.2016 convicted and sentenced the Applicant and others. The Applicant was convicted for commission of offences punishable under Sections 302, 143, 147, 148 read with 149 of IPC, under Section 4 read with Section 25 of the Arms Act and under Sections 37 read with 135 of the Maharashtra Police Act. The major sentence was for life imprisonment for commission of the offence punishable under Section 302 read with Section 149 of IPC.

6. The date of incident is 25.7.2014. The Applicant was arrested on the same day and since then he is in custody. During the COVID-19 period, he was released on bail for a period of almost two years. Thus, as of today, he has suffered the actual imprisonment of 7 years & about 5 months. In this background, we have heard learned counsel for the Applicant as well as learned APP. When the first application for bail was rejected on 11.9.2017, the applicant had hardly completed about three years of imprisonment. Therefore, that order has to be seen in that background. Today, the Applicant has spent

more than 7 years & 5 months in custody. In this background, we have heard learned counsel for the Applicant on merits of the matter.

7. As mentioned earlier, the incident has taken place on 25.7.2014. The main witness referred in the earlier order i.e. PW-11 Mangesh Jadhav has narrated the incident. In the first part of his deposition, he has described about the enmity between his group and the group of the Applicant. After describing their previous enmity, said eye witness has described the actual incident. On 25.7.2014 at about 7.30 p.m., this witness along with his family was sitting in his house. At about 9:15 p.m., he heard shouts. He rushed to the spot. He noticed that the accused Ashok Nagare and Mandabai Nagare were beating his younger brother Sagar. The incident escalated. This witness tried to intervene. The accused held him. Thereafter the accused Raju Nagare took out a knife and stabbed this witness's brother Sagar on his chest. It is alleged that the Applicant assaulted Sagar with sword. Sagar fell down on the ground. He was taken to Life Care Hospital, but, he was

declared dead.

8. There are depositions of other eye witnesses, namely, PW-8 Sonu Bidlan and PW-1 Suman Jadhav, who was the first informant. PW-8 Sonu Bidlan had specifically stated that the Applicant assaulted Sagar with a sword on his back. This witness has also attributed the main assault to Raju Nagare. He has stated that Raju assaulted Sagar with a knife on the chest.

PW-1 Suman Jadhav was the mother of the deceased. She has narrated that when Sagar was returning home, accused No.6 stopped him and all the accused including the present Applicant started assaulting him. The Accused Raju stabbed him with a knife. The present Applicant assaulted him with a sword. To that extent her description of the incident is slightly different than that given by PW-11.

9. Learned counsel for the Applicant submitted that the deposition of these witnesses would indicate that they were in no position to witness the incident. The spot from where

they allegedly saw the incident and the spot at which the incident had taken place should be considered together. It was not possible for the eye witnesses to have witnessed the incident. She submitted that the Applicant is not attributed the fatal blow. The deceased was assaulted on the chest by the co-accused i.e. accused No.7 Raju Nagare.

10. Learned APP opposed these submissions. According to her, on past three occasions, the Applicant's application was rejected. There are at least three eye witnesses. Their evidence is corroborated by the medical evidence and, therefore, bail should not be granted to him.

11. We have considered these submissions. As noted earlier, there is change in circumstance from 11.9.2017 when the Applicant's bail application was first rejected. After that more than six years have passed. From that point of view, we have considered the evidence. The evidence of PW-11 Mangesh Jadhav shows that some quarrel was already going on at around 9.15 p.m. on that day. This witness went to the spot. At that time he saw that the accused Ashok Nagare and Mandabai

Nagare were beating Sagar. This witness tried to intervene. At that point of time, the other accused held him and then blows were given to Sagar. Thus, there is scope to believe that Sagar was not assaulted immediately though he was alone initially. It is only after PW-11 and others reached the spot, the incident escalated further wherein the accused Raju Nagare gave a blow with knife on the chest.

12. There are allegations that the Applicant had also assaulted with a sword. Therefore, the question would remain whether there was common object of the assembly and whether there was premeditation and meeting of minds between all the accused to commit this assault on Sagar. This question will have to be decided at the final hearing stage. At this stage, the Applicant's role can be distinguished from that of the main accused Raju Nagare, who had given the fatal blow.

13. The postmortem notes show the injuries. The cause of death is mentioned as 'hemorrhagic shock due to stab injury in chest'. The other injuries were not described as fatal injuries. Therefore, after the Applicant's arrest, his period of custody for

more than 7 years & 5 months, can be taken into consideration for grant of bail.

14. In this view of the matter, we are inclined to grant bail to the present Applicant during pendency of his Appeal. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.692/2016, the Applicant is directed to be released on bail on his executing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SHIVKUMAR DIGE,J.)

(SARANG V. KOTWAL, J.)

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