

Nikita

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

BAIL APPLICATION NO.3384 OF 2023

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KAILAS
DARADE

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Dattatray @ Datta Yallappa Khandekar ... Applicant

V/s.

State of Maharashtra ... Respondent

Mr. Umesh R. Mankapure for Applicant.

Mr. Pankaj P. Deokar, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : MARCH 1, 2024

P.C.:

1. This is an application under Section 439 of the Code of Criminal Procedure seeking bail in connection with C.R. No.93 of 2022 registered with Sangli Rural Police Station, Sangli for offences punishable under Section 302, 307, and read with 34 of the Indian Penal Code, 1860.

2. The prosecution case in short is that on 21st March 2022 at 7.30 PM. the informant and her husband Suresh Nandrekar (deceased) left the house on motorcycle of Sagar Pawar for Harimandir Temple. While returning home at around, 9.00 PM., unknown persons standing near tree, suddenly came and assaulted the deceased with axe and road. The informant and deceased fell down on the road. According to the prosecution, the person

holding iron rod assaulted the deceased when the informant tried to save him, they assaulted the informant. The deceased was thereafter taken by informant and three other persons to Sangli Civil Hospital. The First Information Report was lodged. The deceased succumbed the injuries on 22nd March 2022. The investigating agency recorded a supplementary statement of informant. In the identification parade, the informant and one of the daughter identified the applicant and another accused.

3. The applicant filed an application under Section 439 of the Code of Criminal Procedure, 1973 which was rejected by Sessions Judge on 14th February 2023. The second application on the ground of parity with accused who was named in supplementary statement having released on bail was also rejected. Hence, the applicant has filed present application.

4. Learned advocate for the applicant submitted that the material to connect the applicant with the person matching the description given by the informant is lacking. There is no material to connect the applicant with the person who was holding rod as the cloths recovered did not matched with the description of the cloths in the First Information Report. He submitted that person having motive and accepted the money has already been released on bail. The person named in the supplementary charge-sheet carrying axe is also released on bail. The charge-sheet is filed. Investigation is completed. The applicant is entitled to be released on bail.

5. Learned APP opposed the application, stating that the

materials on record in the form of identification parade, statement of eye witnesses and recovery of cloths are sufficient at the stage as the nature and gravity of offence is serious.

6. On perusal of the charge-sheet it appears that the informant had given vivid description of actual assault in the First Information Report immediately lodged after the incident. In the report, the informant has given sufficient description of the cloths and the identification parade conducted thereafter, the informant wife has identified the applicant as the person who was carrying iron rod. In the First Information Report, specific role of assault of iron rod was attributed to the applicant. There is recovery of cloths from the applicant.

7. The evidentiary value of the identification parade and the recovery of cloths and their match with the description in the First Information Report needs to be adjudicated by the Trial Court at the time of Trial.

8. Based on material on record, prima facie it appears that the material is on record sufficient to prima facie attributing role to the applicant that the applicant assaulted the deceased with iron rod. The material on record prima facie indicates applicant's involvement in the assault.

9. The release of other co-accused who was named in the supplementary charge-sheet is not helpful to the applicant as the said accused was not named in the FIR and FIR indicated that the assault was by two persons.

10. The other accused released on bail in Bail Application

No.3616 of 2022 had not participated in the assault and therefore, the applicant is not entitled to be released on the ground of parity.

11. Considering the nature and gravity of the material against the applicant, no case of release on bail is made out.

12. The bail application is, therefore, rejected.

13. It is clarified that the observations made in the order are only for the purpose of deciding the bail application and the Trial Court shall decide the Trial uninfluenced by the observations made in the present order.

(AMIT BORKAR, J.)