



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3862 OF 2023**

Amar Dattu Lakade	...	Applicant
versus		
The State of Maharashtra	...	Respondent

WITH
BAIL APPLICATION NO.3841 OF 2022

Dattu Dnyandeo Lakade and Anr.	...	Applicants
versus		
The State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.3959 OF 2023
IN
BAIL APPLICATION NO.3841 OF 2022

Balu Shivaji Lakade	...	Applicant/Intervener
and		
Dattu Dnyandeo Lakade and Anr.	...	Applicants
versus		
The State of Maharashtra	...	Respondent

Mr. Rajiv Patil, Sr. Advocate with Mr. Rupesh A. Zade, for Applicant in BA 3862 of 2023.

Mr. Ashok P. Mundargi, Sr. Advocate with Mr. Rupesh A. Zade for Applicant in BA 3841 of 2022.

Mrs. Supriya Kak, APP for State.

Mr. P.D.Purway with Mr. Akshay Bhalerao, for Applicant in IA 3959 of 2023.

Mr. S.A.Pawar, Police Havaladar, Bhigwan Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 16 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in C.R.No.283 of 2021 registered at

Bhigwan Police Station, Pune Rural, for the offences punishable under Sections 302, 307, 324, 143, 147, 148, 504, 506 have preferred these applications to enlarge them on bail.

3. Balu Shivaji Lakade, the first informant, resides at Lakadewadi, Tal. Indapur, Dist. Pune, along with his family members, including grand father Maruti, the deceased. The deceased had a dispute with his cousins Dnyandeo Lakade (A3), Rambhau and Bayaji in respect of the ancestral land admeasuring 88/80 sq.ft. The said dispute was resolved by dividing the said land into parcels of 22/80 ft. The lands of the deceased and Dnyandeo (A3) were open.

4. On 4 November 2021, at about 4.00 p.m., the first informant accompanied by the deceased Maruti and Valmik, brother of the first informant, had gone to the said land to clear the land. At that time, Narayan (A1) and Dattu (A2), sons of Dnyandeo and Amar (A3), son of Dattu, and Tanmay (A5), and Shubham (A6), the sons Narayan, came thereat. They restrained the first informant and his associates from clearing the said land. Requesting them not to rake up quarrel, the first informant and Valmik came near Maruti Temple. Other persons from the Lakade clan also came thereat.

5. Altercation ensued over the exact location of the land which was allotted to the deceased. Applicants Narayan and Dattu called Dnyandeo (A3) and Parubai (A7), Tanmay (A5) and Shubham (A6) at the said spot. Applicants Narayan, Dattu

and Amar were armed with iron rod. Co-accused Shubham, Dnyandeo and Parubai were also armed with sticks and stones. The applicants and the co-accused started to assault the deceased Maruti, first informant and his brother Valmik. The applicants Narayan and Dattu allegedly gave exhortation to the co-accused not to spare anybody. The applicant Amar gave a blow on the head of Valmik. Tanmay, Shubham, Parubai and Dnyandeo assaulted the first informant and his father Shivaji by means of sticks and stones. Deceased Maruti and Valmik fell down on the ground and sustained grievous injuries. Eventually, the deceased Maruti succumbed to those injuries. The applicant came to be arrested.

6. By an order dated 13 October 2020, Tanmay (A5) and Shubham (A6) were released on bail. Likewise, co-accused Dnyandeo and Parubai were granted pre-arrest bail by this Court by an order dated 13 July 2022.

7. Mr. Ashok Mundargi, learned Senior Advocate for the Applicants - Dattu and Narayan in BA No.3841 of 2022, submitted that the alleged incident had occurred in a spur of moment post an altercation. Members of both the groups participated in the fight and sustained injuries in one and the same occurrence. It was submitted that the deceased had sustained only one injury over the parietal region. Had the deceased been assaulted by a number of assailants, as alleged by the prosecution witnesses, the deceased must have sustained a number of injuries. It is the positive case of the first informant and all the witnesses that both Narayan and

Dattu assaulted the deceased by means of an iron rod. As the deceased had sustained only one injury, neither the applicant Narayan nor Dattu can be exclusively attributed with the role of having caused the said injury on head. Therefore, the applicants deserve to be enlarged on bail.

8. Attention of the Court was invited to the statement of Mr. Dnyaneshwar Shirsat, who stated that, on 4 November 2021, when Narayan and Dattu had come to his place, there was injury on the head of Dattu, his shirt was torn and there were blood stains thereon. Mr. Mundargi would urge that the statement of Dnyaneshwar Shirsat, who is an independent witness, indicates that in the very same occurrence the applicant Dattu had also sustained injury. Therefore, the applicants deserve to be enlarged on bail.

9. Mr. Rajiv Patil, learned Senior Advocate for the applicant – Amar, submitted that the role attributed to the applicant – Amar is that of assaulting Valmik Lakade by means of an iron rod. The injury certificate of Valmik indicates that Valmik had sustained CLW on head and the injury was designated simple. Mr. Patil submitted that since the injury certificate records the history of assault by means of stone and rod and other co-accused have also allegedly assaulted injured Valmik, the applicant Amar deserves to be enlarged on bail on the ground of parity.

10. Mrs. Supriya Kak, learned APP, resisted the prayer for bail. Mr. Purway, learned Counsel for the Intervener in IA No.3959 of 2023 also opposed grant of bail.

It was submitted that the applicant and the co-accused had mounted assault on the unarmed members of the informant party in prosecution of the common object of the unlawful assembly. The applicants and the co-accused had reached the scene of occurrence armed with deadly weapons. Narayan and Dattu had exhorted rest of the members of the unlawful assembly not to spare anybody. Therefore, the applicants do not deserve to be released on bail.

11. I have perused the material on record. In addition to the deceased, Shivaji Lakade and Valmik Lakade had sustained injuries in the alleged occurrence. The material on record indicates that the accused and the informant party were at loggerheads over a property dispute. At the time of the alleged occurrence, persons had gathered to resolve the dispute. There are statements of a number of witnesses who have categorically and consistently stated that Narayan and Dattu started to abuse the members of the informant party. Narayan and Dattu called rest of the co-accused. Applicants Narayan, Dattu and Amar were armed with iron rod. The applicants Narayan and Dattu exhorted that they will not spare the deceased and he will be killed. Thereafter, they gave blows by means of iron rod on the head of the deceased.

12. The endeavour of Mr. Mundargi to draw home the point that as the deceased had sustained only one head injury and there is no material to indicate as to who had caused the said injury, both Narayan and Dattu deserve to be enlarged on bail, appears attractive at the first blush. However, the entire setting of the matter

cannot be lost sight of. The applicants Narayan and Dattu allegedly called rest of the co-accused. Assembly, which was initially lawful, turned unlawful. The applicants and co-accused were allegedly armed with deadly weapons. The applicants Dattu and Narayan allegedly exhorted rest of the members of the unlawful assembly not to spare anybody. The applicants chose to assault the deceased who was 85 years of age.

13. In this view of the matter, and the fact that the offences were committed in prosecution of the common object of the unlawful assembly and, resultantly, overt act of each of the members of the unlawful assembly need not be established, the submission of Mr. Mundargi does not merit countenance.

14. The claim of the applicant – Amar for bail, however, stands on a different footing. Amar allegedly assaulted Valmik by means of an iron rod. The injury certificate of Valmik records history of assault by stone and iron rod. It appears that Valmik had sustained two CLW on head. Since the injury was initially designated as simple by the Medical Officer, and the role of assault by means of stone has also been attributed to the co-accused, who have been released on bail, the applicant – Amar deserves exercise of discretion.

15. Hence, the following order :

ORDER

(i) Bail Application No.3841 of 2022 preferred by Dattu Dnyandeo Lakade and Narayan Dnyandeo Lakade stands rejected.

(ii) Bail Application No.3862 of 2023 stands allowed.

(iii) The Applicant – Amar Dattu Lakade be released on bail in C.R.No.283 of 2021 registered with Bhigwan Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iv) The applicant Amar shall mark his presence before Bhigwan Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(v) The applicant – Amar Dattu Lakade shall not enter the limits of Village Nirgude, Lakadevasti, Tal. Indapur, Dist. Pune, for a period of one year or till the conclusion of trial, whichever is earlier.

(vi) The applicant – Amar Dattu Lakade shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(vii) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(viii) The applicant – Amar shall regularly attend the proceedings before the jurisdictional Court.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(x) Interim Application No.3959 of 2023 stands disposed.

(N.J.JAMADAR, J.)