

Order below Exh.55 in Sessions Case No. 36/2020

(CNR No.MHST170006882020)

1. After going through the contents in application, material available on record and say/remarks filed by Ld. APP for State as well as after hearing the Ld. Counsel for applicant/accused and Ld. APP for State, following points arise for my determination. I have recorded my findings thereon with reasons thereto which are as follows :-

<u>POINTS</u>	<u>FINDINGS</u>
1 Whether case has been made out by applicant/accused for granting relief of bail as prayed for ?	Yes.
2 What order ?	As per final order

REASONS**As to Point No.1 and 2 :-**

2. The complainant Vitthal Mahadeo Jagdale r/o Mankarnwadi, Tal.Man, Dist.Satara, is residing in joint family along with his wife Ujwala, father Mahadeo Jagdale, mother Bayadabai, brother Dashrath Mahadeo Jagdale and his two sons viz. Sunil and Amol; and daughter Poonam. One of the Accused Lalaso Avaba Mohite and one Balku Avaba Mohite are maternal uncle of complainant. They are also inhabitant of village Mankarnwadi, Tal.Man. There is dispute between the family of complainant and family of maternal uncle of complainant in respect of landed property of Gat No.239 situated at village Mankarnwadi since last many years. According to complainant, Balaku Lalasaheb and Narayan who are his maternal

uncle and Kiran, Sunil, Anil, Akash, Dattatray, Jyotiram and Malhari who are their sons, are raising frequent quarrels with them.

3. On 25/7/2020, the complainant had been near Maruti temple at Lonar Vasti at about 6 p.m. At that time, his maternal uncle Narayan came there and started to abuse him stating that the complainant has brought them in trouble and threatened him to kill. The complainant did not react and left the place. When he was in front of his home at about 7.00 pm, he saw his brother in law Akash Narayan Mohite while proceeding along with his milk van. He restrained him and enquired towards him as to why his father abused him. He instructed to call his father. Akash left the vehicle and rushed towards his home while abusing the complainant. The complainant also followed him. At that time, Balku Avaba Mohite, Narayan Avaba Mohite, Appaso Mohite and Lalaso Avaba Mohite , Sunil, Anil, Akash, Dattatray, Jotiram Malhari and this Applicant Accused Kiran, collectively came in front of the complainant to restrain him. The accused Lalaso Avaba Mohite, accused Narayan Avaba Mohite, accused and Akash Mohite and this Applicant Accused Kiran Mohite were armed with axe in their hand whereas Dattatray and Sunil were armed with sticks. Akash took the stick from the hands of accused Dattatray and started to give blows of stick on both legs of complainant. The complainant started to shout when his father Mahadeo Krishna Jagdale and brother Dashrath Mahadeo Jagdale and his sons, Amol and Sunil heard the noise of complainant, they immediately came on the spot.

4. As soon as they arrived on the spot, Lalaso Avaba Mohite who was armed with axe, threatened the complainant stating that "Aaj

tuze khandan sampavato, sagalech khalas karun takato” and gave blow of axe in his hand upon head of Mahadeo Krishna Jagdale who is father of complainant. As a result of said blow, Mahadeo fall down and turned into unconscious condition. Thereafter, this Applicant Accused Kiran gave blows of axe in his hand upon head, abdomen and hands of son of complainant viz. Sunil. When another son of complainant viz. Amol intervened in order to rescue his brother Sunil, accused Akash also gave blow of axe on head of Amol whereas Narayan Avaba Mohite who was armed with axe also gave blow of axe on head of brother of complainant viz. Dashrath Mahadeo Jagdale. Thereafter, all of them started to beat the complainant and others by means of axe and sticks in their hand. Ramesh Kisan Gend who is Police Patil of village Mankarnwadi and other neighbours arrived on the spot, they picked up the complainant and others in injured condition and brought them at Rural Hospital Mhaswad for the purpose of treatment. The injured were referred for further treatment at Civil Hospital Satara.

5. When the complainant came in deposing state of mind on 26/7/2020, he filed the report under consideration narrating the entire incident to police officer at Civil Hospital Satara, who forwarded the same towards Mhaswad police station. The offence punishable under section 307, 326, 324, 323, 504, 506, 143, 144, 147, 148, 149, 188, 269 of IPC and offence u/s 51(d) of Disaster Management Act and under section 11 of Covid-19 Rules and Regulation 2020 at Mhaswad Police Station under C.R. No. 165/2020. Mahadeo Krishna Jagdale who is father of complainant and injured in incident under consideration died during treatment. The, allegations for commission of offence punishable under section

302 of IPC are subsequently added in offence under consideration.

6. Except the applicant/accused named as Kiran Narayan Mohite and another Accused Lalaso Avaba Mohite and rest of the accused in offence under consideration are released on bail. The applicant/accused Kiran Narayan Mohite has come with the case by way of this application that no any offence as alleged by the complainant is occurred at all. His name is unnecessarily implicated in this case on the background of previous rivalry. The complainant has filed this false and fabricated complaint against them with intent to implicate him in such type of case in false manner and to counter the report filed by accused Lalaso Avaba Mohite against them for an offence p/u/s. 307 and other sections on the basis of which an offence under C.R. No.166/2020 is registered.

7. The Ld. Counsel for applicant/accused submitted that this application is second bail application filed on behalf of this applicant/accused. The earlier bail application was rejected on the ground that investigation of offence is in progress. Now the charge-sheet in offence is filed. The case is also committed for trial in this Court. It means there are changes in the circumstance as investigation is over and charge-sheet in offence under consideration is filed. The Ld. Counsel also invited my attention towards the order passed by Hon'ble High Court of Judicature Bombay in Criminal Bail Application No. 366/2021 filed by another accused in offence under consideration named as Appaso Avaba Mohite. Relying upon the order of Hon'ble High Court, he submitted that when earlier bail application filed by Appaso Awaba Mohite was rejected by this Court, Criminal Bail Application No. 366/2021 was filed by him in

the Hon'ble High Court. The Hon'ble High Court, while granting bail, has observed as follows.

“Initially the informant was assaulted on his legs, therefore, common object of the assembly, at least initially was not to cause death or even grievous injury to any vital part. Subsequently, the deceased in this case Mahadev and others came on the scene to help the informant Vitthal and in further assault Mahadev suffered head injury which resulted in his death. As rightly submitted by the learned counsel for the applicant, there is no role of assault attributed to the present applicant. Even any weapon is not attributed to him. There are indications that the informant's group was aggressor as the informant had followed Aakash to his house where that incident has taken place. There is already a cross F.I.R. The applicant is 71 years of age. The investigation is over and the charge-sheet is already filed, therefore, no purpose will be served by keeping the applicant in detention as an under trial prisoner. He deserves to be released on bail.”

8. Relying upon these observations, the Ld. Counsel submitted that the applicant/accused is also entitled to seek bail as prayed in this application as allegations on the point of involvement of this applicant/accused are similar to the allegations against Appaso Awaba Mohite. The Ld. Counsel again explained the entire background of the case under consideration and submitted that there is dispute between two groups in respect of landed property in question. The frequent quarrels are going on between two groups. On the day of incident, no any such thing was occurred as it enable to give any provocation to the complainant to enquire towards Akash about so-called act done on the part of his father. The subsequent act of the complainant himself to follow Akash along with other family members of his house itself is sufficient that they were aggressive and following him with intention to kill him. He

added that it can easily be inferred that the complainant and others were more aggressive as their intention was to assault Akash who was rescuing himself from their clutches at relevant time. The Ld. Counsel invited my attention towards allegations made in report based on subsequent event and submitted that if it is assumed for a moment that the events as alleged in report were occurred, for the sake of discussion, then the allegation in report itself goes to show that there was no any intention on the part of any of applicant/accused to commit such criminal acts by which death would be caused. In short, the intention of causing death or intention of causing such bodily injury as the applicant/accused known to be likely to cause death of the injured to whom the harm is caused, is certainly missing. The alleged acts appear to be occurred in grave and sudden provocation and defend themselves from sudden attack. The Ld. Counsel also submitted that if the allegations in report are considered as a whole, then it cannot be inferred on the basis of the allegation that the alleged acts are done with intention of causing bodily injuries to the injured who died and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Therefore, the case under consideration do not come within the ambit of ingredients which are required to be proved under section 300 of IPC and bring home charge for the offence punishable under section 302 of IPC.

9. The Ld. Counsel again invited my attention towards the allegations in respect of act of assault to cause injuries to other injured in offence under consideration. He submitted that the injuries sustained to other injured are also not of such nature that offence punishable under section 307 of IPC can also be made out

against these applicants/accused. The incident under consideration is occurred on the background of rivalry between two groups based on dispute in respect of land. The incident in question has taken place in darkness at about 7.00 p.m. The injured informant Vitthal Mahadeo Jagdale has filed his affirmation to disclose the facts which were exactly occurred while incident when he recovered after report. His affirmation is supporting to the case made out by the applicant/ accused. The investigation of offence under consideration is now over. One of the accused involved in offence is released on bail by way of order of the Hon'ble High Court. In such circumstances, no prejudice will cause to the investigation authority if applicants/ accused are released on bail at this stage. The Ld. Counsel placed his reliance upon the observations of the Hon'ble Apex Court in the case of Prabhakar vs. State of U.P. and another reported in 2020 (Cri) 638; Dattaram vs. State of U.P. reported in 2018 DGLS (SC) 67 = AIR 2018 SC 980 in support of his submissions. He also submitted that the applicants/accused are ready to abide all the conditions laid down by this Court while releasing them on bail.

10. The Ld. APP for State while resisting the application under consideration on the basis of the remarks filed on record on behalf of him in this case, vehemently submitted that there was an unlawful assembly of the applicants/accused and other accused involved in offence, the common object of which was to commit the offence as alleged in report under consideration. The Ld. Counsel invited my attention towards the allegation and submitted that when Akash was returning towards his home on the background of enquiry on the part of informant, rest of the accused including the

applicant/accused immediately gathered on the spot and wrongfully restrained the informant in front of the house of one Ashok Laxman Mane. Accused Lalasaheb, Narayan, Kiran and Akash were armed with an axe in their hand whereas Dattatray and Sunil were armed with sticks. Akash, who was supported by rest of accused, at relevant time, immediately took the stick in the hand of accused Dattatray and started to give blows on both the legs of complainant without giving any opportunity to express him. When the complainant started to shout, his father, brother and his son immediately rushed towards him in order to rescue him. When they arrived on the spot, accused Lalaso expressed his intention by stating that "*Aaj tuze khandan sampavato, sagalech khalas karun takato*" and thereafter he gave blows of axe in his hand on head of Mahadeo Krishna Jagdale who sustained grievous head injury and collapsed on the spot due to blows given by Lalaso and turned into unconscious condition on the spot. The Ld. APP further submitted that he was immediately referred for medical aid, however, he died during treatment. The Ld. PP for State invited my attention towards the observations of Medical Officer made in P.M. Examination report about exact cause of death of deceased Mahadeo Krishna Jagdale. Relying upon the observations of Medical Officer he submitted that inference can very well be gathered on the basis of circumstances available on record that there was intention on the part of all the accused who were members of that unlawful assembly to cause death not only of Mahadeo Krishna Jagdale but also other other injured who sustained the injuries. He pointed out me that there is specific allegation that this Applicant accused Kiran also gave blows of axe on head, abdomen and hands of son of informant named as Sunil and when his another son Amol was intervening in order to

rescue his brother Sunil, Akash gave blow of axe on his head. Accused Narayan who was armed with axe also gave blow of axe on head of brother of informant and thereafter all the accused started to beat the complainant and others by means of axe and sticks in their hand. The complainant who sustained injuries in said assault was also turned into unconscious condition for some moment on the spot of incident. Ramesh Kisan Gend who was acting as Police Patil, arrived on the spot along with other neighbours, shifted the injured towards hospital to give medial aid. He further submitted that if the events occurred at the time of occurrence of incident are considered, then definitely there is sufficient circumstance to bring home the charge of offence punishable under section 302, 307, 326 of IPC, in addition to other offences alleged against accused as unlawful assembly was formed on the spot of incident. The common object to kill entire family was expressed by Lalasaheb and in prosecution of said common object, criminal acts as alleged are occurred. Therefore, in accordance with the provisions of section 149 of IPC. All accused are responsible for the criminal acts done by themselves in prosecution of common object of their assembly. He further submitted that role of each and every accused is attributed in case under consideration. The conduct of applicant/accused to come on the spot along with weapon followed by criminal acts to assault all the injured in severe manner is sufficient to point out that there are reasonable grounds to believe that the applicant/accused has committed the offence.

11. The Ld. APP also submitted that the affirmation filed on the part of complainant expressing the fact that the case is amicably settled between themselves out of the court, has no strength at all as

the offence under consideration is non-compoundable offence. The complainant has no locus standee to compound the offence in such manner. Therefore, the said circumstance will not also come for the help of applicant/accused. On the contrary, the said circumstance is an example that how the applicant/accused are tampering the evidence of prosecution. So far as the submissions of Ld. Counsel for applicant/accused based on observations of the Hon'ble High Court, the Ld. APP submitted that the Hon'ble High Court has passed the order under consideration observing that the role of those accused does not attribute. Therefore, the said order also will not come for the help of applicant/accused. The Ld. APP for State also submitted that the observations of the Hon'ble Apex Court in reported cases cited on behalf of applicant/accused cannot be considered as the facts in the case in hand and the facts in reported cases are not of similar nature. On the contrary, the observations are based on different footing. Therefore, the same cannot be considered and prayed for rejection of application.

12. I have gone through the allegations in report and material which has brought on record along with question on the background of submissions of Ld. Counsel for applicant/accused and Ld. APP for State. It is admitted fact that there is dispute between the complainant and other injured at one side and applicants/accused at another side in respect of landed property, the frequent quarrels were going on between these two groups. On the date of incident, the complainant was also threatened and humiliated on the part of accused Narayan. The allegations in report under consideration goes to show that when the informant saw accused Akash in front of his home, he started to enquire towards him about the reason of threats

given to him on the part of accused Narayan. When accused Akash rushed towards his home, the complainant followed him. When the complainant and applicants/ accused came in front of each other in front of house of one Ashok Laxman Mane. The subsequent events are occurred as per the contention of complainant. There are allegations against accused about formation of unlawful assembly. The members of unlawful assembly were armed with deadly weapons and in prosecution of common object of that assembly they committed the criminal acts as alleged in report under consideration.

13. I have gone through the allegations in report on the background of submissions of Ld. Counsel for applicant/accused and Ld. APP for State. In accordance with the allegations in report, it reveals that the informant has alleged that accused Akash initially gave blows of stick on his both legs. When his father arrived on the spot the applicant/accused Lalaso threatened to kill everybody in the family of complainant and he gave blow of axe on head of Mahadeo, who is father of complainant. Mahadeo collapsed on the spot, turned into unconscious condition. He was referred for medical aid and he died due to injuries sustained to him in incident under consideration. The observations in P.M. report prima facie are sufficient that the criminal act on the part of Lalaso resulted into death of Mahadeo. So far as the role of other accused in offence under consideration to cause injury to deceased Mahadeo is concerned, there are not any allegations against rest of the accused that they assaulted Mahadeo and inflicted any blow by means of any weapon or otherwise to Mahadeo as a result of instigation on the part of accused Lalasaheb. So far as allegations against this

applicant/accused are concerned, the allegations are restricted to the extent that this applicant/accused Kiran gave blow of axe on the head of son of complainant namely Sunil. The allegations are of such criminal acts which need to be considered after going through all the material which will come on record and evidence which will come on record during trial. The allegations that all the accused beat the complainant and other by means of axe and sticks are general allegations. Whether there was formation of an unlawful assembly whether there was common object of assembly to cause death of deceased Mahadeo or others and in prosecution of common object each and every member of assembly was acting is also necessary to be considered, after going through the evidence which will come on record during trial.

14. The role attributed to each and every accused in offence needs to be considered. Except accused Lalaso, rest of the accused have not assaulted deceased Mahadeo. In such circumstances, their involvement in offence punishable under section 302 of IPC is entirely based upon the proof of the fact of formation of unlawful assembly as well as on the proof of the fact that there was common object of assembly to kill deceased Mahadeo and in prosecution of common object of said assembly, accused Lalaso gave blow of axe on the head of deceased Mahadeo.

15. The investigation of offence under consideration is already over. There are also cross complaints against the informant and others. In such circumstances, it is necessary to consider the evidence which will come on record in trial in order to see whether there is involvement of other accused in offence punishable under section

302 of IPC except accused Lalaso, therefore, no prejudice will cause to prosecution, if the applicant/accused is released on bail.

16. In view of all the aforesaid discussion, I have come to the conclusion that the applicant/accused Kiran Narayan Mohite is entitled to be released on bail upon the conditions laid down in the final order. Therefore, I answered point no.1 in the affirmative and proceed to pass following order.

ORDER

1. The application is allowed as follows.
2. Applicant/accused Kiran Narayan Mohite be released on bail on furnishing P.R. bond of Rs. 25,000/- with one or two solvent sureties of like amount, on compliance of following conditions.
3. Applicant/accused shall attend the concerned Mhaswad police station on first Monday of every month till completion of trial and Mhaswad Police Station to maintain attendance record of applicant/accused.
4. Applicant/accused shall not tamper with the evidence of prosecution and shall not pressurize the prosecution witnesses.
5. Breach of any of the condition would be ground for cancellation of bail.

Date : 09-02-2022.

(Rajendra V. Huddar)
Addl. Sessions Judge, Vaduj.