

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL BAIL APPLICATION NO.89 OF 2015

Sambhaji Bhanudas Budhawale ...Applicant

Vs.

The State of Maharashtra ...Respondent

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Mr. Bharat M. Sarda for the applicant .
Mr. J. H. Ramugade, APP for the State.

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CORAM : A. R. JOSHI, J

DATE : 05/05/2015

P.C.:

Heard rival submissions on this application for bail in the matter of offences punishable under sections 307, 326, 341 r/w.34 of the IPC.

2. The case against the applicant is that he assaulted the father of the complainant in the afternoon of 27/03/2014 when said father of the complainant, the injured, was proceeding on a motorcycle alongwith one more witness. The injury certificate

shows that the injured, father of the first informant, had received several head injuries. One of the injuries is depressed fracture of the skull bone and it is a grievous injury. Apparently, the said injured would have died if would not have been treated immediately. Further allegations against the applicant are that he came to the spot on the motorcycle alongwith other two co-accused and the injured who was then pillion rider on the vehicle driven by one witness, was pushed by the accused due to which he fell in road side gutter and sustained injuries. Thereafter, the applicant and other co-accused got down from their motorcycle and assaulted the victim by means of stones and caused various injuries. Thereafter, the applicant fled away from the spot.

3. Learned Counsel for the applicant stated that the names of the assailants are not mentioned in the FIR and the FIR is against three unknown persons. Though this is a factual position, the fact remains that subsequently after the arrest of the assailants, including the present applicant, they were identified in the test identification parade. On this test identification parade, it is

brought to the notice of this Court that another witness who was driving the motorcycle had not identified any of the accused, including the applicant. The effect of the situation that out of the two witnesses one identifies or not, is to be determined during the trial. At this prima facie stage, identification of the present applicant as one of the assailants in the said act of assault attracting offence punishable under section 307 of the IPC, is sufficient to deny bail during pendency of the trial. The pros and cons of the identification of the applicant cannot be gone into at this stage. Further argument as to the applicant being of young age and has his family to feed may not be of such an overwhelming effect to allow the present application for bail when the offence is serious in nature. In any event, it is not a case in which the applicant can be released on bail though other co-accused were released on bail by this Court. Parity cannot be claimed by the applicant for the reason that the role of the said co-accused definitely is not at par with the role attributed to the present applicant. Hence application is dismissed and accordingly disposed of. Directions are given to the trial Court to expeditiously deal with the matter and dispose it of in accordance with law as early as

possible, preferably within 9 months from the receipt of this order.

(A. R. Joshi, J)