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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 333 OF 2016

Vrushabh @ Kadak Amarnath Pardeshi

..Applicant.

Vs.

State of Maharashtra

..Respondent

Mr. Pandit Kasar for Applicant.

Mr. Deepak Thakare, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 16th April 2016.

P.C.

1 This is second Bail Application preferred by the applicant. Earlier Bail Application preferred by the applicant was not entertained by this Court, as this Court found that there were no merits in the application and therefore after hearing the learned Counsel for the applicant at some length, when this Court had expressed its prima facie opinion about rejection of the application, the learned Counsel for the applicant on instructions from the father of the applicant who was present in the Court, sought leave to withdraw the application. Accordingly leave was granted and the application was disposed off as withdrawn.

2 The learned Counsel for the applicant submitted that the present application is filed as earlier application preferred by the applicant was not dismissed by this Court on merits and the same was withdrawn by the applicant. According to him the disposal of the earlier application does not amount to rejection and therefore the present application is maintainable. Though the present application is not maintainable under the law, at the persistent insistence of the learned Counsel for the applicant, I have heard the learned Counsel for the applicant on merits and I have also perused the record annexed to the application.

3 The applicant is accused in CR No.52 of 2015 registered with Khadki Police Station, Pune under Section 307, 326 read with Section 34 of the Indian Penal Code. The first informant Prasad R. Maratkar has lodged the report on 18.2.2015 about the incident of assault by the accused No.1- Akshay Gaikwad, the present applicant and other accused persons on him and on other victim Hrishikesh Maratkar. In the said report dated 18.2.2015, the complainant has stated that on 18.2.2015 at about 12.00 noon the complainant along with his friends were chitchatting in the precincts of the college when co-accused Akshay Gaikwad along with present applicant came at the spot of incidence and questioned the complainant and abused him and his friends. At that time the brother of the complainant Hrishikesh came there to pacify the said scuffle. The

applicant was carrying a knife having 10 x 12 inch blade and tried to assault the complainant with the same. As the complainant was successful in dodging the said assault, the co-accused Akshay Gaikwad snatched the knife from the hands of the present applicant and gave a blow on the head of the complainant. The complainant sustained bleeding injury. After observing the said attack, the brother of the complainant namely Hrishikesh tried to escape from the scene of offence. The co-accused Akshay then took the knife from the hand of the applicant and then along with applicant and other accomplice chased Hrishikesh and thereafter inflicted blow with the said knife on the stomach of Hrishikesh. Hrishikesh fell down. The co-accused Akshay Gaikwad, the applicant and other accomplice thereafter ran away from the scene of offence. The complainant took medical treatment and subsequently filed the first information report.

4 The learned Counsel for the applicant submitted that as a matter of fact the applicant was not carrying the knife and did not have any intention to assault the complainant and other victim. He submitted that it is Akshay Gaikwad who was carrying knife and he has assaulted the complainant and victim and therefore the applicant cannot be held responsible for the same. He further submitted that the witnesses namely Prof. Arun Shelar and other persons did not support the prosecution case. He submitted that the applicant was 19 years of age when the incident took place and he is a college going student. He

submitted that the after rejection of earlier application (as per his version withdrawal of the application) , the trial has now began which is a substantial chance in circumstance for releasing the applicant on bail. He lastly submitted that the applicant is in jail since last more that one year and he may be released on bail.

The learned APP vehemently opposed the application and pointed out the evidence available on record against the applicant and submitted that there are two cases pending at the discredit of the applicant.

5 At the outset, it may be noted here that the injury certificates of the complainant Prasad and Hrishikesh which are at page Nos.42, 43 and 44 respectively undoubtedly corroborate the version of the complainant. That the complainant and Hrishikesh have received incised wound on the abdomen and other vital parts of the body. There is recovery of knife at the instance of co-accused Akshay. The record in the form of statements of witnesses undoubtedly corroborate the version of the complainant that the applicant was carrying a knife. The applicant was carrying knife which was used in the assault on the complainant and Hrishikesh. At this stage it can certainly be held that the applicant undoubtedly shared common intention along with co-accused Akshay Gaikwad. The material available on record further points out that though Akshay was assaulting the complainant and other victim, the present applicant

did not prevent Akshay from inflicting the blows. It is thus clear that the applicant was sharing common intention with Akshay Gakikwad in assaulting the complainant and other victim Hrishikesh. The applicant has been charged under Section 307 and 326 read with 34 of the Indian Penal Code which is serious in nature. The learned APP has pointed out that there are antecedents at the discredit of the applicant. The applicant is also involved in two other offences namely CR Nos.30 of 2015 and 43 of 2015 registered with Khadki Police Station, Pune and when the applicant was on bail in those crimes, has committed the present crime. This ground alone is sufficient to reject the present bail application of the applicant. The learned Counsel for the applicant has submitted that the trial has already begun. If the applicant is released on bail, there is every possibility that he may tamper with the evidence and may influence the witnesses.

6 After taking into consideration the material available on record along with the other aspects as stated earlier, I am of the considered opinion that there are no merits in the present application and the same is accordingly dismissed.

(A.S. GADKARI,J.)