

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.733 OF 2016

1) DIPTESH S/o.RAMDAS GHANGHAV)
2) RAJESH S/o. JANARDHAN GHANGHAV)
@ RAJENDRA)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Hrishikesh Chavan i/b. Mr.Vilas Kadam, Advocate for the Applicants.

Smt.S.S.Kaushik, APP for the Respondent – State.

Mrs.Pranali Kakade, Advocate for the Intervenor.

CORAM : P N. DESHMUKH, J.

DATE : 19th JULY 2016.

P.C. :

1 Accused no.4 Diptesh Ghanghav and Accused no.6 Rajesh Ghanghav @ Rajendra involved in Crime No.I-89 of 2015 registered on 9th September 2015 with Kasara Police Station, District Thane, for the offences punishable under Sections 147, 148, 341, 326, 307, 504, 506 read with 149 of the Indian Penal Code had sought bail.

2 Heard learned counsel for applicants, learned APP and learned counsel for intervenor. It is submitted on behalf of applicants that on bare perusal of FIR, no involvement of applicants as assailants of injured Sagar can be established. It is also contended that there are no statements establishing involvement of applicants, nor any weapons are recovered from either of the applicants. It is, therefore, contended that, for want of sufficient evidence, applicants be released on bail by imposing suitable condition as charge-sheet is already filed.

3 Learned APP has not seriously disputed above aspect except for contending that applicants and complainant are residing in the same locality, and thus, there is possibility of law and order problem, in the event applicants are released on bail. Learned counsel for intervenor on the other hand has referred to statement of injured Sagar and has submitted that from his statement, applicants' involvement is clearly established as they were having common object along with other members of unlawful assembly. She has thus opposed for grant of bail.

4 Perused the FIR lodged by Nanda Gangurde, mother of the injured, which relates to one incident involving her son Akshay, brother of victim Sagar and one Pratik, her relative, who were on cross terms since one month prior to the incident on the issue of theft of cell phone.

5 FIR further reveals that in the background of above strained relations, on 8th November 2015, at about 8.00 p.m., when Akshay was proceeding to his house from Kasara Bazaar Peth, he was intercepted near railway bridge by Pratik, saying as to why he was alleging him to have stolen the cell phone, and extended threats that he would see to him and also abused him. Akshay on reaching home gave this information to his father Manohar. At that time, both the applicants along with other co-accused who were seven in number, arrived and committed assault on Sagar, son of complainant, by chopper, on his abdomen and hands. There is specific mention of co-accused Pratik Ghanghav assaulting by iron bar on the head of Sagar. Contents

of FIR further reveal that amongst co-accused, accused no.7 Ramdas was armed with chopper and iron bar, while co-accused Avinash was armed with dagger. No weapons are attributed to any of the applicants. Similarly, from the contents of report and supplementary statement of complainant, no role is attributed to either of the applicants except for their presence being members of unlawful assembly, having not armed with any weapons.

6 Perusal of statement of Sagar recorded on 17th November 2015, which is almost after ten days, reveals that the role attributed to applicants is only of their manhandling him along with co-accused. Learned APP on obtaining instructions from the Investigating Officer, who is present in the court, makes a statement that names of Manohar Gangurde, Vimal Ghodke, Akshay Gangurde, Aakash Gangurde, Vikas Lahu and Pratik Jagtap are referred in the report, as the persons who had intervened the assault, and stated that neither of these witnesses had attributed any role to applicants as assailants of Sagar.

7 Having considered evidence as aforesaid, except for presence of applicants on the spot, their only involvement is by way of manhandling Sagar and nothing more. In that view of the matter, though learned counsel for intervenor had invited attention to the injuries stated to be grievous and dangerous to life, sustained by Sagar, since neither of the applicants from the available evidence can said to be author of such injuries sustained by Sagar, this by itself is not sufficient to reject their bail, more particularly when charge-sheet is already filed and the applicants are behind bar since the date of incident, i.e. 8th November 2015.

8 In this view of the matter, application is allowed, as per order below :

- i) Applicant Diptesh Ghanghav and Applicant Rajesh Ghanghav @ Rajendra shall be released on bail on their furnishing PR.Bond in the sum of Rs.25,000/- each with one surety each in like amount.

ii) While on bail, applicants shall mark their presence with Kasara Police Station, Thane, on first day of each month pending trial, and shall not indulge into any criminal act nor tamper with the witnesses.

iii) Applicants shall attend each date before the learned Sessions court.

(P. N. DESHMUKH, J.)