

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

BAIL APPLICATION NO.761 OF 2016

Sunil Babu Mhatre ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Rajiv Chavan Senior Counsel with Mr.R.D.Suryawanshi i/b.
Mr.Vishal Patil, Advocate for the Applicant.

Mr.R.P.Hake Patil h/f. Mr.S.P.Kadam, Advocate for the Intervenor.

Mr.H.J.Dedhia, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 13th JULY 2016.

P.C.

1 Accused No.2 Sunil Mhatre involved in Crime No.I-102 of 2015 registered by Vishnunagar Police Station for the offences punishable under Sections 307, 452, 143, 147, 148, 149 of the Indian Penal Code, has sought regular bail.

2 Heard learned Senior Counsel Shri.Rajiv Chavan and the learned Additional Public Prosecutor for the respondent/State. Also heard Mr.R.P.Hake Patil, advocate for the intervenor.

3 Perused the documents. Admittedly, charge-sheet in the present Crime is filed. It is also not in dispute that out of five accused, three accused are released on bail by the learned Sessions Court, while one co-accused has not yet applied for bail.

4 On considering the FIR, it reveals that it came to be lodged by one Dnyaneshwar Mhatre, who admittedly is not an eye witness contending that he received information from one Sushil Mhatre that injured Nitesh was lying in injured condition near the cemetery and, therefore, complainant, along with Sagar, Bhushan, Omkar and Milind went to the spot and found Nitesh lying in injured condition. Nitesh was then carried by them to nearby hospital for providing him medical treatment. It is the case of complainant that, on the way, on his inquiring with Nitesh, he informed that while he was alone in his office, applicant along with co-accused Rajesh and Pradeep Mhatre, Sunil Bhoir and Ketan Kulkarni arrived and assaulted him by iron pipe on his head. According to complainant, in spite of his repeated question as to who assaulted him, by iron pipe, injured could not reply, as he was by then unconscious. Injured was initially taken to Indira Hospital Dombivali, from where he was referred to Icon Hospital.

5 Learned senior counsel for the applicant, with respect to the contents in FIR, about injured having his senses, while on way to Hospital, has submitted that contents do not find corroboration from the medical report on record. Though learned counsel for the intervenor/complainant on this aspect has pointed out statement of Doctor, who has attended injured Nitesh in Icon Hospital first, on the point of time, on perusal of said statement, it also finds to be silent on physical condition of injured to ascertain if injured was unconscious on his admission to Icon hospital.

6 Learned counsel for the applicant then referred to the statement of Hemant Bhoir and Raju Dhotre and has contended that though these witnesses have involved applicant, role attributed to applicant does not establish his involvement in the offence levelled against the applicant along with co-accused.

7 In the background of submissions, as aforesaid, on perusal of statement of Hemant Bhoir, which came to be recorded two days after the incident on 23/04/2015 reveals that applicant along with co-accused was assaulting injured by kick blows and in the course of same transaction co-accused Rajesh committed assault on him by iron pipe on head, due to which he sustained head injury.

8 Similarly on perusal of statement of eye witness Raju, his statement contradicts statement of Hemant, when he has stated that applicant was assaulting injured by iron pipe on his back, abdomen. Even otherwise on considering the injury certificate, injuries stated to have sustained by injured on the abdomen and back are in the form of abrasion and contusion.

9 Having considering the available evidence against the applicant, as aforesaid, coupled with fact that three co-accused are already released on bail by the learned Sessions Court, application is liable to be allowed, as investigation is complete and charge sheet is filed, by imposing suitable conditions upon the applicant as per order below :

- (i) Applicant Sunil Babu Mhatre shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one surety in like amount.
- (ii) While on bail, the applicant shall attend the Vishnunagar Police Station on 15th day of each month between 11.00 a.m. to 4.00 p.m. and shall mark his presence on each date at the time of trial.
- (iii) Applicant shall not tamper with the witnesses.
- (iv) Applicant shall not indulge in any crime pending trial. In the event, he is found involved in any crime, his bail shall stand cancelled automatically.

(P. N. DESHMUKH J.)