

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1710 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. V. R. Garad for the Applicant.

Ms. R.M. Gadhvi, APP. for the Respondent-State.

CORAM :A.S.GADKARI, J.

DATE : 14th September, 2016

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in CR No.71/2016 dated 18.3.2016 registered with Deonar Police Station, Mumbai under Sections 307, 324, 341, 504, 323 read with 34 of the Indian Penal Code.

The first information report is lodged by Shahanawaj @ Shanu Shaikh. It is stated in the said report that due to the earlier enmity the applicant and other co-accused were having grudge against the first informant and his associates. That, on 18.3.2016 at about 11.00 a.m. when the informant was proceeding to Govandi Railway Station by an auto rickshaw, the co accused Kallu @ Gaurav stopped the said vehicle. There were altercations which ensued in a scuffle. The applicant and co-accused Lambu Vadda tried to accost Irfan. At that time, co accused Lambu Vadda assaulted the informant with a sword on his head and back. That, the co accused Lambu

Vadda also assaulted the informant with a bambu stick. That, after the friends of the informant reached there, the applicant and other accused persons left the said spot. After lodgment of the first information report the police started the investigation. During the course of investigation, supplementary statement of the first informant dated 22.3.2016 is recorded. In the supplementary statement the first informant has stated that the applicant and co-accused Kallu abused and assaulted him with fist and kick blows. The police have also recorded the statements of the eye witnesses who have attributed the role of abusing and assaulting the first informant by the applicant.

2. It is to be noted here that arising out of the same incident the present applicant has also filed FIR dated 18.3.2016 bearing CR No.72/2016 under Sections-307, 323, 504 read with 34 of the I.P.C. and Sections 4 and 27 of the Arms Act. The applicant in his report has stated that on the same date, time and place when he was chitchatting with his friends near Vikas Bar, Tanaji Malusare Chowk, Govandi the informant in CR No.72/2016 Shahanawj @ Shanu and other accused persons came at the spot from an auto rickshaw. That, Shahanawj @ Shanu took out a sword from the said auto rickshaw and tried to assault Gaurav @ Kallu with the same. When the applicant tried to intervene and tried to avoid the said blow of sword, at that time Shahanawj @ Shanu assaulted the applicant with the sword on his neck and pushed him aside. Due to which the

applicant sustained injury on his neck and also to his right shoulder. It is further stated that the co-accused Shahanawj thereafter assaulted Gaurav and other persons with fist and kick blows. After the people in the vicinity gathered on the spot Shahanawj and other accused left the spot. In the said crime after investigation the police have submitted charge sheet.

3. It is to be noted here that as far as assault on the applicant by Shahanawj is concerned, the injury certificates which are at Pages 30 to 32 to the present application clearly corroborates the version of the applicant that the applicant had sustained wound on his neck and was suffering from tenderness to his right shoulder.

4. As far as present crime i.e. CR No.71/2016 wherein the applicant is arraigned as accused is concerned, the first informant in his statement has attributed the role of accosting Irfan by the applicant and co-accused Kallu. In the supplementary statement dated 22.3.2016 the first informant Shahanawj has further attributed the role of abusing and assaulting the complainant by fist and kick blows. Thus, in the present crime though prima facie it can be said that the applicant shared common intention, there is no attribution of any role of actual assault or causing injury with any sharp edge weapon. That, there is a case and a cross case and therefore, it can safely be presumed that the incident as alleged had taken place. As stated earlier, the applicant has received injury on his neck from

Shahanawj i.e. informant in the present crime which is duly corroborated by the medical evidence. The applicant is arrested on 19.3.2016 and since then he is in jail. The learned APP. on instructions submitted that there are no antecedents at the discredit of the applicant. In view of the above, the applicant has made out a case for his release on bail.

5. Hence, the following order.

a) The applicant be released on bail in CR No.71/2016 registered with Deonar Police Station, Mumbai on his furnishing PR bond of Rs.20,000/-with one or two local sureties in the like amount.

b) After his release from Jail the applicant shall attend the Deonar Police Station once in a month i.e. on every first and third Monday of the month between 11.00a.m. to 1.00p.m. till the conclusion of the trial.

c) The applicant shall attend all the dates before the trial Court.

d) Any two consecutive defaults in complying with the aforesaid conditions shall attract the provisions of Section 439(2) of the Cr.P.C.

e) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses

f) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)