

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

BAIL APPLICATION NO. 165 OF 2017

Devendra Ajit Gambhir & Anr.

..Applicants

v/s.

The State of Maharashtra

..Respondents

Mr. Pankaj Kavale for the Applicant
Mr. Yogesh Nakhwa for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th JUNE, 2017.
(IN CHAMBER)**

P.C.

1. This is a second bail application filed by the aforesaid applicants, who are the accused nos.2 and 6 in Sessions Case No.54 of 2014, pending on the file of the Sessions Judge at Alibaug.
2. The previous bail application filed by the applicants was allowed to be withdrawn with opportunity to file fresh application after recording of evidence of material witnesses or within a period of six months from the date of framing of charge.

3. The learned Counsel for the applicant has submitted that the charge was framed on 16th July, 2016 and till date the trial has not progressed beyond recording of examination-in-chief of the complainant. He submitted that the applicants herein are not involved in the crime and that they have been falsely implicated, as can be seen from the CCTV footage. He has submitted that the complainant and others had in fact assaulted his mother and that Crime No. 87 of 2001 has been registered on the basis of the FIR lodged by the applicant no.1. He has submitted that the applicants have no criminal antecedents. They are in custody since the year 2013 and that there is no prima facie material to show their involvement in the crime. He, therefore, urges that the Applicants be released on bail.

4. The learned APP submits that the applicant and his brother have criminal antecedents. He has further submitted that the brother of the applicant was involved in committing murder of Sachin, the son of Bharati and the cousin of the first informant. He has submitted that the accused in the present crime had tried to

pressurise the mother of the deceased not to support the charges of murder leveled against the co-accused. He has submitted that the applicants and the other co-accused had set fire to the house of Ramesh and had assaulted them with sticks/base ball sticks. He submits that the statements of the police constables Trupti Sondkar and Jadhav vis-à-vis the spot panchanama prima facie reveal that the house of Ramesh was gutted in fire. He therefore, contends that the material on record prima facie reveals involvement of the Applicants in the said crime.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the applicants and the learned APP for the State.

6. The FIR vis-à-vis the statements of the witnesses prima facie indicate that the co-accused Mayuresh, who is the elder brother of the Applicant No.1 was facing trial for committing murder of Sachin, son of Bharti Tawade. The statement of Bharti prima facie reveals that on 30.12.2013 at about 7.00 p.m. the mother and paternal aunt

of Applicant No.1 entered her house and exhorted her to withdraw the charge of murder levelled against her son Mayuresh. Failing which, she threatened that each one of them would be eliminated in the same manner as Sachin. The material on record prima facie reveals that while said Bharti and others were proceeding towards police station to lodge report about the said incident, the Applicants and the other co-accused who were armed with Dandas, baseball sticks, etc. rushed towards the house of Ramesh Tawade. They were abusing and threatening to cause death of Bharti Tawade and her family members. The statements of these witnesses prima facie reveals that on reaching near the house of Ramesh, the co-accused Mayuresh fired a shot from his revolver. The applicants and the other co-accused also trespassed in the house of Ramesh and destroyed the household articles. They switched on the gas regulator, poured kerosine and set the house on fire. while the first informant and others were proceeding towards police station, applicants and others assaulted them with dandas and baseball sticks.

7. The statements of the police personnel more particularly, Trupti

Sondkar and Jadhav also prima facie reveal that upon receiving information about the said incident they had gone to the house of Ramesh. Their statements also prima facie reveals that the household articles were damaged and the house of Ramesh was set on fire. These witnesses have stated that they had called for the police staff as well as the fire fighters to extinguish the fire. The statement of Sondkar also prima facie indicates that there was smell of gas in the kitchen and that she had entered the kitchen and turned off the gas regulator and thereafter they had extinguished the fire. The spot panchanma also prima facie reveals that the house of Ramesh was gutted in the fire. Thus the material on record prima facie proves the involvement of the applicants in commission of the alleged offence.

8. The learned APP has submitted that the co-accused Mauryesh has been held guilty of murder charge and has been convicted and sentenced for life imprisonment. The learned APP has also placed on record a chart with details of the criminal proceedings pending against these two applicants. a perusal of the said chart reveals that both these applicants are involved in committing several serious

crimes. Considering the nature of the offence, antecedents of the applicants as well as the motive in committing the present crime and the subsequent conviction of Mauresh, in my considered view the applicants are not entitled for bail at least till such time, the evidence of the complainant and the other material witnesses viz. the family members of the complainant is recorded.

9. Under the circumstances, the application is dismissed. Considering the fact that the applicants are in custody since the year 2013, the learned Sessions Judge is directed to complete the evidence of the Complainant and other material witnesses within a period of six months from the date of receipt of the order.

(ANUJA PRABHUDESSAI, J.)