

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL BAIL APPLICATION NO.307/2017**

Deepak @ Dipa Subhash Chaurasiya      .. Applicant  
vs.  
State of Maharashtra                              .. Respondent

.....  
with CRIMINAL APPLICATION NO.159 OF 2017

Dr.Navinkumar Gupta                              .. Intervener

In the matter of

Deepak @ Dipa Subhash Chaurasiya      ..Applicant  
vs  
State of Maharashtra                              .. Respondent

with BAIL APPLICATION NO.454 OF 2017

Vijay Krishna ChinnaSwamy                              .. Applicant  
vs  
State of Maharashtra                              .. Respondent

with CRIMINAL APPLICATION NO.238 OF 2017

Dr.Navinkumar Gupta                              .. Intervener

Vijay Krishna ChinnaSwamy                              .. Applicant  
vs  
State of Maharashtra                              .. Respondent

Mr.Aniket Vagal for Applicant in BA No.307/2017  
Mr.Rajeev Kumar for Intervener  
Mr.Shailendra Kumar C.S.for Applicant in BA No.454/2017  
Mr.Deepak Thakare APP for State

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**CORAM : PRAKASH D. NAIK, J.  
DATED : 07 July 2017.**

**P.C.**

1. The Applicants are seeking bail in connection with C.R.No.127/2016 registered with Kalachowki police station for offence under sections 307, 341,427,120B read with section 34 of the IPC and sections 4 and 25 of the Indian Arms Act.

2. The Applicant in Bail Application No.307 of 2017 was arrested on 27.6.2016 and the Applicant in Bail Application No.454 of 2017 was arrested on 28.6.2017.

3. The prosecution case is that FIR is lodged by the Complainant alleging that while he was proceeding in his car he was obstructed by the accused. The Complainant was also accompanied by another witness who is working as a nurse. One of the accused gave a blow of chopper on the windscreen of car and as a result of which glass of the windows was broken. The accused then gave two blows on the shoulder and wrist of the Complainant. Two other persons were accompanying the said accused. It is the prosecution case that there is a conspiracy to

kill the Complainant and the incident has occurred at the instance of one builder namely Sanjay Veera.

4. The Applicants were arrested and on completion of the investigation the charge sheet is filed.

5. Learned Advocate for the Applicant in Bail Application No.307 of 2017 submitted that there is no role assigned to the Applicant. He submitted that the offence under section 307 of the IPC is not made out. The Applicant was allegedly identified in the identification parade. However, while conducting the identification, no role is prescribed to the said Applicant. There is no memorandum of the identification parade and the prosecution is relying upon a format which mentions that the Applicant is identified by witnesses. He submitted that there are no criminal antecedents against the Applicant.

6. Learned Advocate for the Applicant in Bail

Application No.454 of 2017 submitted that the Applicant has been falsely implicated in the crime. Although the FIR refers to a chopper being used in the crime, a sickle has been recovered at his instance. It is further submitted that he has been identified by one Sanjay Raghunath Pawar. He pointed out his statement in which it is mentioned that on account of darkness, it was not possible to clearly see the assailant. He therefore, submitted that the identification is under doubt. It is further submitted that while identifying the Applicant, no role has been mentioned which is allegedly played by the Applicant. He submitted that there is one case registered against the Applicant under section 324 of IPC in which he has been granted bail. He submitted that other accused have been granted bail by the Sessions Court.

7. The learned APP strongly opposed the application for grant of bail. It is submitted that overt act has been attributed to the Applicants. A case vide C.R.No.132 of 2016 has been registered against the Applicant in Bail Application No.454 of

2017 and while on bail in the said case, the present offence is committed by him. It is submitted that both the Applicants are identified by witnesses and hence, the Application be rejected.

8. Learned counsel appearing for the Intervener supported the submissions of the learned APP. He submitted that there is a conspiracy at the behest of a builder to liquidate the Complainant. He further submitted that there was an attempt earlier against the Complainant and the CDR record showed that at that point of time, the accused involved in the crime were in the vicinity wherein the earlier incident had occurred. He further submitted that the Complainant is being intimidated to withdraw the Complaint and in that regard a FIR has been registered with the Police Station. He pointed out the photographs of the injured person to show the nature of the injuries sustained by him. It is therefore, submitted that the Application for bail may be rejected. The Intervener filed the say opposing bail. He also relied upon decisions of the Supreme Court in the case of NEERU YADAV VS

STATE OF U.P. and another delivered in Criminal Appeal No.2587 of 2017 and Criminal Appeal No.269-270 of 2009. In both the decisions the Apex Court has referred to parameters for grant of bail.

9. The Sessions Court while rejecting the Application for bail preferred by both the Applicants had observed that the Accused are likely to tamper with the evidence. There was no FIR registered and no investigation in respect of the alleged incident of attack on the Complainant as submitted by Intervener. Apparently from the documents which is part of the charge sheet, it appears that no proper requisite procedure for identification as enumerated in the Bombay High Court Criminal Manual has been followed. Statement of one Sanjay Raghunath Pawar mentions that it was not possible for him to see the assailant on account of darkness. The investigating machinery has not recorded the statement of witnesses after the identification parade. The Applicants are in custody since the date of their arrest. Although

there is recovery of a weapon from the Applicant in Bail Application No.454 of 2017, what has been recovered is a sickle and the Complainant has alleged that the assailant had used a chopper.

10. In the absence of statements recorded after the identification parade or statements during the identification parade, it is not possible to attribute any specific overt act of assault to the Applicants as claimed by the prosecution. Although it is alleged that a builder is involved in the crime and at his behest this incident has occurred, the said accused have been granted Anticipatory bail by the Sessions Court. The accused who is alleged to have taken contract to assault the Complainant is also granted bail. The investigation is completed and charge sheet has been filed. The Applicants are in custody from date of arrest. Trial may not commence and conclude immediately.

11. In the circumstances, bail can be granted to the

Applicants. Hence, the following order :

**O R D E R**

- (i) Bail Applications are allowed
- (ii) The Applicants are directed to be released on bail on their furnishing P.R.Bond in the sum of Rs.30,000/- each with one or two sureties in the like amount;
- (iii) The Applicants are directed not to tamper with the evidence;
- (iv) The Applicants are restrained from entering the area where the Complainant is residing;
- (v) The Applicants are directed to report at the concerned police station on every Saturday between 11.00 a.m. to 1.00 p.m. till further orders.

Criminal Application Nos.159 of 2017 and 238 of 2017  
does not survive and are disposed of.

**(PRAKASH D. NAIK, J.)**