

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

CRIMINAL BAIL APPLICATION NO. 276 OF 2017

Amit Shashikant Gaykar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH

**CRIMINAL APPLICATION NO. 169 OF 2017
IN
CRIMINAL BAIL APPLICATION NO. 276 OF 2017**

Sagar Ramesh Sathe. ... Intervenor.

IN THE MATTER BETWEEN

Amit Shashikant Gaykar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rahul Thakur, advocate for Applicant.

Mr. Subhash V. Gutte, advocate for intervenor.

Ms. J.S. Lohakare, APP for State.

Mr. Anant Parad, PI, Bhiwandi City Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 20, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 16/5/2016 in Crime No. 126 of 2016 registered at Bhiwandi City Police Station. The investigation is completed and charge-sheet is filed against the applicant for offence punishable under section 302, 307, 143, 147, 148, 149, 323, 324, 326, 504, 120B of the Indian Penal Code and under section 3(1)(x), 3(2)(25) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3 It is the case of the prosecution that on 11th May, 2016 one Sagar Sathe lodged a report at the police station alleging therein that on 1st May, 2016, the complainant alongwith his friends including Vicky Dhepe had been to Varhaladevi Nagar area, as they had an

order for playing banjo. That in the intervening night on 11th May and 12th May, 2016 suddenly present applicant alongwith other accused had been to the spot. They had expressed their annoyance as the first informant and his friends had acted smart on 14th April, 2016. All the accused were armed with deadly weapon. It is alleged that the present applicant was armed with an iron rod. He mounted assault on Vicky Dharap. One of the friend of Vicky Dhepe, namely Devendra Gadekar had tried to escape by running towards Buddha Vihar. It is alleged that the present applicant alongwith co-accused had followed him and that one of the accused had assaulted him on his legs. He had sustained injury on his tibia. It is alleged that the present applicant had also assaulted with an iron rod.

4 The learned Counsel for the applicant vehemently submits that no role is ascribed to the present applicant as far as the assault on Vicky Dhepe is concerned. That the applicant is alleged to have followed Devendra Gadekar and assaulted him with iron rod. It is submitted that the injury certificate of Devendra Gadekar does not

substantiate the allegations of the complainant. The statement of Devendra Gadekar is also recorded under section 164 of the Code of Criminal Procedure, 1973 and he has not prescribed any overt act to the present applicant, much less, he has not named the present applicant. It is in these circumstances, the learned Counsel prays that the applicant be enlarged on bail.

5 Upon perusal of the first information report and the submission of the eye witnesses, it is clear that the present applicant was one of the member of the unlawful assembly and he was armed with iron rod. This would be indicative of the fact that he had shared common object with the co-accused, who had mounted assault upon the deceased. That the applicant had not actually assaulted the deceased but at the same time, the Court cannot be oblivious of the fact that the applicant had shared common object with the co-accused. Besides, the first informant, there are eye witnesses and only because a specific act is not attributed, the case of the applicant cannot be distinguished from the case of the co-accused. Hence, at this stage, it

would not be appropriate to enlarge the applicant on bail. Hence, the application being sans merits stands rejected.

6 However, the learned Sessions Court shall not be influenced by the said observations at the time of trial.

7 The application is disposed of accordingly.

8 The intervention application is heard, allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)