

Anand

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

BAIL APPLICATION NO.891 OF 2017

Nikhil alias Bhaiya Gajendra Dhaware .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.P.G.Sarda, Advocate, for the Applicant
Mr.Rajan Salvi, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.07.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.136 of 2016 registered with the Barshi City Police Station, Solapur, for the alleged offence punishable under Section 302 r/w 34 of the Indian Penal Code.

3. Learned counsel for the Applicant states that although there are 3 – 4 eye witnesses in the said case, none of the witnesses have attributed any overt act to the Applicant. He submitted that the said eye witnesses have only stated that the Applicant was present at the spot. He

submits that the deceased - Shivaji Manohar Yadav in his oral dying declaration had disclosed to his wife and daughter that all the accused (including the Applicant) assaulted him.

4. Learned APP does not dispute the aforesaid.

5. Perused the papers. The incident has taken place on 10.04.2016 at about 6.30 p.m. to 6.45 p.m.. In the said incident, all the accused are alleged to have assaulted the deceased – Shivaji Yadav with wooden sticks and fist & kick blows. During treatment, the Applicant succumbed to the injuries sustained by him. There are eye witnesses to the said incident. A perusal of the statements of Somnath Nanavare, Sandip Wani & Amol Kasabe shows that all the accused and the Applicant were present at the spot. However, none of these eye witnesses have attributed any overt act to the Applicant. In the oral dying declaration made by the deceased – Shivaji Yadav to his wife and daughter, the deceased had disclosed that all the accused (including the Applicant) assaulted him. Prima facie, there is some discrepancy between the ocular evidence and the oral dying declaration. Investigation is complete and charge-sheet is filed. It is informed that the Applicant is a student of Zadbuke Mahavidyalaya, Barshi, District –

Solapur and was studying in the 2nd year B.A. at the relevant time. The Applicant has no antecedents.

6. Considering the role of the Applicant and the discrepancies in the ocular evidence and the oral dying declaration, with regard to the Applicant's role, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

ORDER

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs. 20,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall attend the trial Court on every date given by the trial Court as directed by the learned Judge;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits,

in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)