

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

BAIL APPLICATION NO. 2464 OF 2016

Jayesh Sunil Mistry.	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Tanveer Khan, Advocate for the applicant.

Ms. Veera Shinde, APP for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.
DATE : JANUARY 4, 2017.**

P.C.

1 Heard the learned counsel for the applicant and the learned APP for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 12/5/2016 in Crime No. 126 of 2016 registered at Bhiwandi City Police Station for the

offence punishable under section 302, 307, 143, 147, 148, 149, 323, 324, 326, 504 and 120-B of the Indian Penal Code.

3 It is the case of the prosecution that on 11/5/2016 Sagar Sathe lodged a report at the police station alleging therein that he belongs to the group of Vishal Avhad, Vicky Dhepe, Devendra Gadekar, Jagdish Gohil. That the applicant belongs to the rival group of Raju Chaugule, Rupesh Komalwar @ Pandya. There were intermittent quarrels between both the groups. There were cross-complaints. It is alleged that on 11/5/2016 at about 1.15 a.m. the first informant was in the company of Vicky Dhepe, Devendra Gadekar, Prem Kamble, Akash Madhikhambe, Sunil Reddy, Niraj Waghmare & others. Raju Chaugule, Aditya Jadhav, Ravi Sawant, Sunny Phutankar and others had come on the spot in an Innova Car No. 1000. They alighted from the said Innova car. They were armed with deadly weapons. They raised quarrel with rival group over the past incident and thereafter they had chased Vicky Dhepe and assaulted him with deadly weapons. Vicky was admitted to the hospital and succumbed to the said

injuries on 15/5/2016.

4 It is pertinent to note that first informant has not named Jayesh Mistry as it is not the case of the prosecution atleast at that stage that Jayesh Mistry was present at the spot when Vicky Dhepe was chased and assaulted. The statement of the first informant was also recorded under section 164 of the Code of Criminal Procedure, 1973 on 23/6/2016. At that stage, the first informant had submitted that the present applicant i.e. Jayesh Mistry and Rupesh Komalwar has chased Vicky Dhepe. The first informant had anticipated that they would assault him and therefore, he had concealed himself and at that time, he was assaulted by one unknown person. No doubt there is a discrepancy in the statement under section 154 of the Code of Criminal Procedure, 1973 and 164 of the Code of Criminal Procedure, 1973. Soon after the incident, the first informant had not named the present applicant. It appears that since the applicant belongs to the group of Raju Chaugule, he has been subsequently implicated and arraigned as an accused. It is in these circumstances that the applicant deserves to be

enlarged on bail.

5 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of discharge or quashing of FIR or at the time of trial. The co-accused shall not claim parity with the present applicant.

6 Hence, the following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall report to concerned Police Station on 1st

and 3rd Sunday of each month between 10.30 a.m. to 12 noon till framing of charge.

7 The application is disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)