

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 354 OF 2018**

Vikas @ Nana Dhanaji Babar
Versus

Applicant

The State of Maharashtra

Respondent

Mr.L.S.Deshmukh i/b Mr. Mr. Priyal G. Sarda, for the applicant.
Mr.Y.M.Nakhwa,APP, for the State.

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 21st February, 2018.**

P.C. :

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 13.9.2017 in Crime No.540 of 2017 registered at Baramati City Police Station for the offences punishable under Section 307 read with Sec. 34 of the Indian Penal Code.
2. It is the case of the prosecution that on 4.9.2017, Vijay Laxman Gawhale lodged a report at the police station alleging therein that he happens to be an Advocate. That on 3.9.2017 at about 9 p.m – 9.30 p.m., he had been to Motibaug just for a ride. They were chatting in the car on Ring Road. All of a sudden, 3 unknown persons had encircled his car. They had peeped in the car and when his wife had lowered the glass pane

and the first informant had alighted from the car. The said 3 persons had raised a quarrel with him. One of them had assaulted him on his forehead with a knife. The other two had also assaulted him and by the time he raised hue and cry, they had fled from the spot. On the basis of the said report, offence was registered against unknown persons. The complainant was taken to Baramati Hospital. The medico-legal certificate shows that he had sustained 4 incised wounds which are described as grievous in nature.

3. On 12.9.2017, certain photographs were shown to the complainant calling upon him to identify as to whether any of the wanted accused were involved in the said case and at that time, the complainant had seen the photographs and had pointed out that the present applicant was involved in the said offence. Test identification parade was held. The applicant was identified.

4. The learned counsel for the applicant submits that in fact the photographs were shown to the complainant and therefore, the whole exercise of conducting the test identification parade has become futile.

5. The learned APP submits that the applicant has criminal antecedents and therefore, he does not deserve to be enlarged on bail. Just because the applicant was involved in other offences as the photograph was

shown to the complainant, it cannot be said that the applicant is involved in the present case. The only material against the present applicant is that he has been identified in the test identification parade by the complainant. Since the identification is on the basis of the photographs which were shown to the informant before his arrest, rather the arrest was caused because of the identification of the applicant by way of his photograph. The applicant deserves to be enlarged on bail.

6. The above observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall not reside at Baramati till framing of charge save and except to attend the dates before the Court.

(SMT. SADHANA S.JADHAV, J.)