

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

CRIMINAL BAIL APPLICATION NO.472 OF 2018

Mr.Kapaslal Suraj Rajput	... Applicant
V/s	
State of Maharashtra	... Respondent

Mr.Ganesh Rangayya for the Applicant.
Ms.Veera Shinde, APP for the State/Respondent.

**CORAM : SMT.SADHANA S. JADHAV, J.
DATE : JUNE 05, 2018.**

P.C. :

1. Heard.
2. This is an application under Section 439 of Cr.P.C. On 6th March 2016 in Crime No. 75 of 2016 registered at Kondhwa Police station, Pune for the offences punishable under Sections 302, 326, 143, 147, 148, 149 of Indian Penal Code and under Section 37(1) r/w 135 of Bombay Police Act.
3. It is the case of the prosecution that on 22nd February, 2016 Sandeep Armote lodged a report at the police station alleging therein that on 21st February 2016 at about 8.00 p.m. he

met his friend Nagesh Paikikar. They had purchased alcohol and were drinking at Punyadham Ashram. At some distance there was a group of more than 4 to 5 persons, they were also consuming alcohol and were conversing in Hindi. They were conversing loudly. Nagesh presumed that said group was giving some bad words to them and therefore, questioned them and there was an altercation between both the groups. Nagesh had repeatedly requested them that they should not quarrel because both the groups are in an intoxicated state of mind. In the midst of the altercation one of the person had drawn an iron rod and assaulted Nagesh 2-3 times on his head and also assaulted the complainant. They had sustained bleeding injuries. In the said altercation the complainant and his friend had lost the keys of their motor bike. Thereafter, the complainant and his friend Nagesh brought the bike near Prince Town Royal Society and they told the watchman to dial 100 and the complainant narrated the incident to the police and called the police. Injured were taken to the hospital. The complainant had specifically stated that he would be able to identify the assailants if given an opportunity. The injured was taken to Inamdar Multispeciality hospital and

from there he was shifted to B.J. Medical college hospital. The injured succumbed to the injuries within 3 days. The Post Mortem notes would reveal that injured Nagesh had sustained 26 injuries. He was brutally assaulted on his head and all over the body. It is a matter of record that the applicant was subjected to test identification parade and has been identified by the complainant. Learned counsel for the applicant vehemently submits that there are several lacunas in conduct of test identification parade. More particularly, the same device were used at the time of identification in all the three accused person. It is further submitted that first injury certificate issued by Inamdar hospital would indicate that there was an assault by stone and that there was only one injury. The said submissions would hold no ground in view of the post mortem notes because soon thereafter he was admitted in B.J. Medical college hospital and has succumbed to the injury within three days. Learned counsel for the applicant submits that the said incident had occurred at the spur of the moment and applicant deserves to be enlarged on bail. Deceased Nagesh was repeatedly requesting accused persons not to assault him or his companion as they

had consumed alcohol. However, taking into consideration the fact that even if the incident had occurred on the spur of the moment, the deceased had sustained 26 injuries, this Court is not inclined to grant bail.

4. In the above mentioned facts, no case for bail has been made out. Hence, the application stands rejected.

(SMT.SADHANA S.JADHAV, J.)