

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 627 OF 2018**

Rajesh Motiram Gaikwad. .. Applicant.

V/s.

The State of Maharashtra. .. Respondent.

Mr. Aniket U. Nikam, advocate for applicant.

Ms. Veera Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,JJ.

DATE : JUNE 15, 2018.

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, 1908. The applicant herein is arrested on 2/10/2017 in C.R. No. 772 of 2017 registered at Yerwada Police Station for offence punishable under section 302, 506(2), 323, 504 read with section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 1/10/2007, Sameer Khan lodged a report at the police station alleging therein that one

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Ajay Gaikwad and Viju run a saloon namely, Ajay Hair Dresser in Masjid Galli. That they are indulging into money lending. Kishor and Rajesh help them to recover the said amount.

4 According to the first informant, his brother Amir had taken loan of Rs. One Lakh @ 30% interest. He had returned Rs. 50,000/- and as far as rest of the amount is concerned, he was paying interest regularly every month. However, they were pressurising him to return the money.

5 On 1/10/2017 at about 7.30 p.m. the complainant had visited the house of his parents at Gandhi Nagar. When he was returning home, he met his friend Imtiyaz Pathan. While they were proceeding further from a chowk, they saw that Amir is being assaulted by Ajay and Viju who are armed with iron rod and that Raju and Kishor were assaulting him with fighters. That the witness was threatened. Imtiyaz had rushed home to inform his parents. The injured was taken to Sassoon Hospital. His brother Amir was declared dead on admission. On the basis of the said report, Crime no. 772 of 2017 was registered and investigation was set in motion.

6 In the course of investigation, the applicant herein was arrested on 2nd October, 2017 since the first informant had named him in the FIR. On 5/10/2017 statements of Imtiyaz and others were recorded, who categorically stated that he was in the company of Sameer on that day. An altercation had ensued between the

brothers of the applicant and Amir. Ajay Gaikwad had assaulted Amir on his head and other parts of the body and after Amir had fallen on the ground present applicant had reached on the spot and had kicked the body of Amir. There are more than 2 eye witnesses who had stated that after the deceased had fallen on the ground the applicant had kicked the dead body.

7 The learned Counsel for the applicant submits that an attempt has been made to implicate all the brothers from the family and that the applicant was not present on the spot when Amir was brutally assaulted by Ajay and others.

8 The learned APP submits that in fact, the applicant had shared common intention with the accused Ajay and Viju and therefore, he does not deserve to be enlarged on bail.

9 As against this, the learned Counsel for the applicant submits that it cannot be said that there was premeditation and the applicant had shared common intention to eliminate the deceased Amir. In fact, he had reached the scene of offence only after Amir had fallen to the ground and there was no question of sharing of common intention.

10 Upon considering the statements of eye witnesses and the submissions advanced across the bar, this Court is of the opinion that the applicant has made out a case for grant of bail.

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11 However, the observations made herein above are restricted to the application under section 439 of the Code of criminal Procedure, 1973 and shall not be considered for the purpose of considering discharge application or for trial.

12 Hence 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/- with one or more sureties in the like amount.

(iii) The applicant shall not tamper with the evidence.

(iv) The applicant shall not reside within jurisdiction of the Yerwada Police Station till the conclusion of the trial.

13 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]