

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

**CRIMINAL BAIL APPLICATION NO. 386 OF 2018
WITH
CRIMINAL APPLICATION NO. 287 OF 2018**

Shivaji Gajendra Wagaj. ...Applicant

v/s.

The State of Maharashtra. ...Respondent.

Mr. Aniket Nikam, advocate for applicant.

Mr. V.M. Thorat I/b. Mr. M.V. Thorat, advocate for intervenor.

Ms. Ameeta Kuttikrishnan I/b. Ms. Shubhada Khot, advocate for applicant in BA 2156/17.

Mr. Vinod Chate, APP for State.

CORAM : SMT. SADHANA S. JADHAV, JJ.

DATE : JUNE 12, 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 22/6/2016 in Crime No. 263 of 2016 registered at Mohol Police Station for offence punishable under section 307, 324, 323, 143, 147, 148, 506 read with section 149 and 120(B), 109, 117 of the Indian Penal Code and Section

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135 of the Bombay Police Aact and 25(4) of the Arms Act. The investigation is completed and charge-sheet is filed.

3 This appears to be a peculiar case of a political rivalry. It is the case of the prosecution that one of the political group was led by one Manohar Dongre, whereas the present applicant was the member of the politically rival group. The applicant had contested election from Jaybhavani Panel which contested grampanchayat election in Shetfal. It appears from the papers of investigation that on 11/4/2016 one Rajendra Pandhare lodged a report at the police station alleging therein that on that day at 9.30 p.m. he had been to Siddheshwar Temple at Shetfal. He had met Manohar Dongre in the temple. At that time, present applicant and other co-accused were armed with deadly weapons such as sword, scythe, sickle, iron pipes and sticks. It appears from the papers of investigation that Vishal Bhangre was the person who had started quarrel as he had pushed Manohar Dongre to the ground only to facilitate the assault by the rest of the people who were armed with sword and other deadly weapons. Ramesh Bhangre and the complainant had tried their level best to save Mr. Manohar Dongre. However, Ramesh Bhangre was also assaulted. Swapnil Karande and Tanaji Dongre had also intervened and they were also assaulted by the crowd. Manohar Dongre had sustained serious injuries. Injured was rushed to Ashwini Hospital. The

medico legal certificate indicates that the injured had sustained more than 7 contused lacerated wounds which were grievous in nature.

4 There are several eye witnesses to the incident. Their statements are recorded under section 164 of the Code of Criminal Procedure, 1973. They have all stated in unison that the present applicant was armed with a sword at the relevant time and had assaulted Manohar Dongre on his neck. From the statements of the eye witnesses, it appears that the applicant was the author of the injury sustained by Manohar Dongre on the posterior triangle of neck on the left side which was muscle deep and was actively bleeding at the time of admission. Thereafter, the injured was taken to several hospitals including Ruby Hall Clinic which shows that the injured had to go through surgery and that he had regained consciousness. The injured happens to be more than 73 years old and therefore, recovery may be a slow process.

5 The charge-sheet is filed against all the accused under section 307 of the Indian Penal Code. The learned Counsel for the applicant vehemently submits that the first informant happens to be an eye witness and he has shown presence of the present applicant alongwith the principal accused. However, no overt act is attributed to the applicant. It is further submitted that the applicant has been arraigned

as an accused in the course of investigation after recording the statements of the witnesses. It is submitted that the injured had not attributed any role to the present applicant. The learned Counsel for the applicant submits that in view of the fact that Sanjay Bhange and other co-accused are released on bail, by virtue of doctrine of parity and since he has been in custody for almost 2 years, the applicant deserves to be enlarged on bail.

6 The learned Counsel for the original complainant/intervenor submits that it was only because of immediate medical treatment that was given to the injured that he had survived and in fact, he was assaulted with an intention to eliminate him. It is submitted that the accused are protracting the trial and that the charge is not framed till today only because the accused who are enlarged on bail have not marked their presence for framing of charge. The present application is filed in December, 2017. Notices were issued on 20/12/2017 and every date, the hearing was adjourned for one or the other reason. Moreover, the complainant has filed an application under section 439(2) of the Code of Criminal Procedure, 1973 seeking cancellation of bail granted in favour of the original accused No. 2 Sanjay Bhange.

7 Taking into consideration the papers of investigation, the

submissions advanced across the bar and the fact that the applicant has been in custody for about 20 months, this Court is inclined to grant bail in favour of the applicant.

8 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial.

9 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 solvent sureties in the like amount.

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

(iv) The applicant shall not reside in Taluka-Mohol till conclusion of the trial.

10 The learned Sessions Judge, Solapur seized with the Sessions Case No. 292 of 2016 shall expedite the trial. Taking into consideration the health of the injured, the learned Sessions Judge shall frame charges against the accused persons on or before 30/6/2018. In the eventuality

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that the accused does not mark their presence, the learned Sessions shall make every effort to issue non-bailable warrant and secure presence of the applicant. No unwarranted adjournment shall be granted to either prosecution or defence.

11 The application is disposed of accordingly.

12 Intervention application is allowed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]