

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

BAIL APPLICATION NO.1261 OF 2017

Tushar @ Bhau Balu Manjalkar Applicant

Vs.

The State of Maharashtra Respondent

Mr. Aniket U. Nikam i/by Mr. Aashish Satpute for the Applicant.
Mrs. S.S. Kaushik, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 15th January, 2018

P.C.:

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

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 20th June 2017 in Crime No.371 of 2017, registered at Pimpri Police Station, District Pune, for the offences punishable under Sections 143, 147, 149, 302 and 341 Indian Penal Code. The investigation is completed and the charge-sheet is filed against the present applicant for the said offences.

3 It is the case of the prosecution that on 20th June 2017 Kailas Shivaji Patole, father of Vinayak lodged a report at the police

station that he was informed by Ashfaque Shaikh and Laxmikant Naik that Vinayak was assaulted by the boys of Indira Nagar area at Jaihind petrol pump. The first informant had rushed to the spot and saw his son on the ground in pool of blood. He was shifted to the hospital, wherein he was declared dead on admission. The eye witness Laxmikant Naik had named the boys, who had assaulted Vinayak. One of them was Tushar @ Bhau Balu Manjalkar, i.e. the present applicant. On 20th June, 2016, the statement of Laxmikant Pralhad Naik was recorded by Police. He had disclosed to the police that on 19th June, 2016, he alongwith Vinayak Patole and Ashish had been to the petrol pump to bring petrol in a bottle for the tempo, which was being driven by Vinayak Naik. Shoobham Salunke had informed the witness Laxmikant Naik that he should leave the place immediately or he will also be assaulted. In the meanwhile Mahesh Poojari and others including the present applicant came on the spot and mounted assault upon Vinayak with fists and kicks blows. The altercation was going on for a long time. At the same time, one Kiran @ Akash Ganpat Chavan and Akash @ Kakadi Dangde had brought 3-4 cement blocks and had thrown the same on the head of Vinayak more than 2-3 times, due to which Vinayak had sustained grievous head injury, so much that brain substance was protruding out and there were multiple fractures over the base of skull. The duramatter was torn over right temporal and frontal region and there was also depressed communicated fracture. Vinayak had

succumbed to the said injuries on the spot. The cause of death was head injury.

4 Learned APP submits that according to one of the witness, one person who was assaulting with the brick was wearing white coloured shirt that white coloured shirt was recovered at the instance of the applicant and therefore it can be said that the applicant had indulged into assaulting with cement blocks. Learned counsel for the applicant submits that it is true that the applicant was present on the spot. However, the allegation against the applicant as narrated by Laxmikant would show that he had assaulted Vinayak with fists and kicks blows and that he had no intention of causing the death. Upon perusal of the statement of the eye witness, it can be inferred that the boys who were assaulting with fists and kicks blows, in all probability, had no knowledge that Kiran @ Akash Chavan and Akash @ Kakadi Dangde would certainly get the cement blocks and hit the same on the head of deceased-Vinayak. The common object was to assault Vinayak. Taking into consideration the aspects of the fact that the co-accused against whom, there is allegation that they had assaulted with fists and kicks blows have been enlarged on bail. The applicant also deserves to be enlarged on bail, with certain stringent conditions. It is pertinent to note that the accused has not been identified at the time of test identification parade. Learned APP submits that the applicant is also charge-sheeted in Crime No.138 of

2013, registered at Pimpri police station for the offence punishable under Section 392 read with 34 Indian Penal Code. He has criminal antecedents and therefore does not deserve grant of bail.

5 Upon perusal of the statements of eye witnesses, the court is of the opinion that the applicant deserves to be enlarged on bail.

6 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 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.

3 The applicant shall not enter into municipal corporation limits of Pimpri-Chinchwad till conclusion of the trial.

(Smt. Sadhana S. Jadhav, J)