

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

CRIMINAL BAIL APPLICATION NO.1633 OF 2018

1) Gorakhnath Eknath Waghe; and	
2) Aloknath Eknath Waghe	.. Applicants
Vs.	
State of Maharashtra	.. Respondent

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Mr.Avinash Fatangare i/b. Ms.Vishakha Pandit, Advocate for the Applicants.
Mr.A.R. Kapadnis, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 22, 2018.

P.C. :

Leave to amend to correct the name of applicant no.1 as "Gorakhnath". Amendment to be carried out forthwith.

2 This is an application for bail in connection with C.R.No.I-168 of 2016, registered with Bajarpeth Police Station, Kalyan, District-Thane, for the offences punishable under Sections 302, 307 and 120-B of Indian Penal Code ("IPC", for short) and Sections 4 and 25 of the Arms Act as well as Sections 37(1) and 135 of Maharashtra Police Act. Applicant no.1 was arrested on 14th September, 2016 and applicant no.2 was

arrested on 20th September, 2016. Investigation is completed and charge-sheet has been filed.

3 First Information Report was registered on 12th September, 2016, for the aforesaid offences. It is alleged that the informant Smt.Vasanti Beturkar is residing at Beturkar Pada, Taluka-Kalyan, District-Thane, alongwith his husband, daughter, father-in-law and mother-in-law. Father-in-law and mother-in-law is used to sleep in a tin shade infront of his house. On 11th September, 2016 at about 10:30 p.m. they took meal and went to sleep at 11:30 p.m. Complainant and her husband was sleeping inside the house and her in-laws were sleeping in tin shed. On 12th September, 2016, at about 3:15 .am., the complainant heard the cry of her mother-in-law Jayabai and she woke up and opened the window of the house and saw that her mother-in-law was fallen from the bed. She opened the door and came out of the house, and, noticed that her mother-in-law had sustained injury on her left cheek, ear and mouth and her face was completely stained with blood and blood was lying on the pillow, bed-sheet and on the ground. Her father-in-law had sustained injury on his head and chest and his entire face was stained with blood. His pillow and bed sheet were stained with blood. She also saw a

sickle lying on the ground. She gave calls to her neighbours and also wake up her husband. Then they all asked her mother-in-law as to what happened, she was unable to speak. Her father-in-law was unconscious. The neighbours gathered there and took the injured to the hospital for medical treatment. Her father-in-law Lahu Beturkar was examined by the medical officer, and, he was declared dead. Mother-in-law was taken for treatment to Shridevi Hospital, Kalyan, where she was admitted and treated.

4 The investigation was proceeded and the applicants were arrested during the course of investigation. Supplementary statement of the complainant was recorded on 13th September, 2016. In the supplementary statement, she has stated that there is enmity between the family of the complainant and the family of Waghe, who are residing in the neighbourhood. It was also stated that the gate which is towards the house of the accused was open on the day of the incident which is normally closed and at the time when people had gathered after the incident, no one from Waghe family was present at the place of incident. Statement of Jayabai was recorded on 28th September, 2018. In her statement, she has mentioned the name of accused who had assaulted her and her husband. Applicants were named in the statement as the

person who had participated in the crime. It is stated that accused Krishna had assaulted by sickle, whereas, Aloknath and Suresh were armed with weapons and they had assaulted her and the deceased. It is also stated that applicant no.1 was present at the scene of offence and was holding the legs of the deceased. It is stated that all accused had assaulted the injured person and the deceased. She also stated that Arun @ Tandu assaulted her by giving a blow of weapon carried by him on her face.

5 Learned advocate for the applicant submitted that the applicants are falsely implicated in this case. False implication is on account of enmity. FIR was lodged on 12th September, 2016. However, names of the accused were not disclosed in the FIR. Complainant is not the eye witness to the incident. Prosecution is relying upon the statement of Jayabai who is purportedly the eye witness to the incident. Her statement was recorded on 28th September, 2016. She is interested witness and no reliance can be placed on her statement. It is submitted that the version of Jayabai is doubtful as her statement was recorded belatedly. It is further submitted that while Jayabai was taken for treatment, the history was given that the assault was by unknown person. It is, submitted that for the first time, the names of the applicants were

implicated as accused in the statement recorded belatedly on 28th September, 2016. There is no evidence to establish that Jayabai Beturkar was not in a position to make any statement till 28th September, 2016. It is, thus, submitted that the applicants were implicated subsequently by Jayabai due to enmity between the two families. It is submitted that except the statement of Jayabai, there is no other evidence to connect the applicant in the said crime. It is submitted that Gorakhnath (applicant no.1) has not been attributed role of assaulting the deceased or injured Jayabai. He was not armed with any weapon and it is alleged that he was holding legs of the deceased. It is submitted that in the absence of any strong evidence, the applicants cannot be continued to be in custody. It is also submitted that the deceased was person having criminal antecedents and he was having enmity with several persons and there is every possibility that he is assaulted by some other persons and applicants were falsely implicated.

6 Learned APP submitted that there is sufficient evidence to show the involvement of the applicant. Statement of Jayabai was recorded on 28th September, 2016. The reason for recording her statement on that day is that she was not in a position to speak on account of the injuries sustained by her. It is

submitted that the endorsement of Doctor clearly indicates that on the date of recording of the evidence, she was in a fit condition for recording the statement and prior to that she was unable to speak. It is further submitted that in the statement of Jayabai specific overtact has been attributed to both these applicants. Applicant no.2 was armed with Axe and applicant no.1 had participated in the crime. His presence is shown in the scene of offence and he was holding legs of deceased. It is further submitted that there is recovery of Axe from applicant no.2. There is enmity between the applicants family and the deceased. It is submitted that statements of Shyam Yadav refers to the plan hatched by Krishna Waghe in liquidating some person as he has stated that he would commit game of some person on that day. It is submitted that the statement of Barku also refers to the extra judicial confession of Krishna. Thus, there is sufficient evidence to show the involvement of the applicant in the said crime and hence, the application be rejected.

7 I have perused the charge-sheet. The incident had occurred on 12th September, 2016. The prosecution case is that there in enmity between Waghe family and the family of the deceased. From the evidence on record, it is apparent that Jayabai had sustained injuries on her face and the endorsement of

the Doctor indicates that she was not in a position to speak. On the date when the statement was recorded, the endorsement of the Doctor reflects that she has is fit to make statement. In her statement, she has named the accused who had participated in the crime. During the course of investigation, the investigating authority have collected evidence, which indicates the involvement of the accused. Jayabai has specifically named the applicants as persons who have participated in the crime. Applicant no.2 had purportedly assaulted Jayabai as well as the deceased. Accused were armed with weapons and deceased had sustained serious injuries. However, as far as applicant no.1 is concerned, he was not shown to be present with any weapons and allegedly he was holding the legs of the deceased at the time of incident. Applicant no.2 attributed role of assaulting by weapon. There is recovery of weapon from him. It is pertinent to note that the first informant is not eye witnesses to the incident. However, in the aforesaid circumstances, considering the role attributed to applicant no.2-Aloknath Eknath Waghe, no case for grant of bail to the said applicant is made out. However, in the light of the role assigned to applicant no.1-Gorakhnath Eknath Waghe and considering the fact that he is in custody from 14th September, 2016, and, charge-sheet is filed, he deserves to be granted bail.

8 In the circumstances, I pass the following order:

:: ORDER ::

- (i) Bail Application of Applicant No.2 Aloknath Eknath Waghe, is rejected;
- (ii) Applicant No.1 - Gorakhnath Eknath Waghe, is directed to be released on bail in connection with C.R.No.I-168 of 2016, registered with Bajarpeth Police Station, Kalyan, District-Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant No.1 shall attend Bajarpeth Police Station, Kalyan, District-Thane, once in a month on first Saturday between 10:00 a.m. to 12:00 noon, till the conclusion of trial;
- (iv) Applicant No.1 shall attend the trial Court during the date of hearing of the case regularly, unless exempted by the Court for some reasons;

- (v) Applicant no.1 shall not indulge in any act of tampering the evidence;
- (v) Bail Application No.1633 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)