

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

BAIL APPLICATION NO. 1723 OF 2018

Rakesh Tukaram Koshti

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Aniket U. Nikam for the applicant.

Ms. Pallavi N. Dabholkar, APP for the State.

Mr. Vijay Dhamal, Police Inspector, Panchavati Police Station,
Nashik present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 05th SEPTEMBER, 2018.

P.C.:

. This is an application for bail under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who is facing trial in Sessions Case No.68/2017 pending on the file of Additional Sessions Judge, Nashik for offences punishable under sections 302, 307, 323, 143, 144, 147, 148, 120-B, r/w. 149 of the Indian Penal Code, Section 135 of the Mumbai Police Act and Section 7 of the Criminal Law Amendment Act.

2. The said case arises from C.R.No.296/2016 registered at Panchavati Police Station, District Nashik pursuant to the first information report lodged by Mandabai Wagh, the mother of the

deceased Sunil.

3. Heard Mr. Aniket U. Nikam, learned counsel for the applicant and Ms. Pallavi N. Dabholkar, learned APP for the State.

4. Mr. Aniket Nikam, learned counsel for the applicant submits that the co-accused who has played a similar role as that of the present applicant has already been granted bail by this Court and that the Applicant is entitled for bail on the ground of parity. Ms. Pallavi Dabholkar, learned APP submits that this applicant has criminal antecedents and that he is facing trial in two serious cases and hence, the applicant could not be entitled for bail on the ground of parity.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. The first information report *prima facie* reveals that on 27/05/2016, at about 05:00 p.m. at Krantinagar Makhmalabad Road, the deceased Sunil and his brother Hemant had set up a bhel/panipuri stall. At about 08:30 p.m., Kundan Pardeshi and some other persons came near the stall and they started assaulting Sunil and Hemant by means of sticks. It is alleged that Kundan Pardeshi picked up a stone

and pelted the same on the head of Sunil. As a result, Sunil sustained head injuries. The first informant and Hemant also sustained injuries in the said incident. They were taken to the hospital and Sunil was declared dead. The post mortem report *prima facie* reveals that death of Sunil was due to : *Cranio-Cerebral damage due to blunt trauma to head, which is sufficient to cause death in ordinary course of nature, all injuries are ante mortem in nature fresh in duration, caused by blunt trauma.*

7. The statement of injured Hemant as well as the two eye witnesses also *prima facie* indicates that Kundan Pardeshi alongwith the present applicant and others had formed an unlawful assembly, armed with sticks and they assaulted Sunil, Hemant and their mother/first informant. Their statement further indicates that Kundan Pardeshi had picked up a stone and thrown it on Sunil as a result of which Sunil sustained head injuries.

8. Thus, the material on record *prima facie* indicates that Kundan Pardeshi, the applicant and others were the members of unlawful assembly and that they assaulted the deceased Sunil, Hemant and the first informant with sticks and stones. It is to be noted that the other

co-accused Aakash Jadhav and Kiran Nagare who were also members of the unlawful assembly and who were also involved in assaulting Sunil, Hemant and the first informant have been granted bail by this Court by order dated 30/07/2018 and 16/04/2018 respectively.

9. Considering the fact that the role played by the applicant is similar to the role played by the other two accused who have been released on bail, in my considered view, the applicant is entitled for bail on the ground of parity. As regards the criminal antecedents of the applicant, it is seen that the co-accused/Kiran Nagare also had criminal antecedents and this fact was brought to the notice of this Court despite which, he has been released on bail. Ms. Pallavi Dabholkar, learned APP concedes that the said order has not been challenged.

10. In the light of above, it is not permissible to reject the bail of present applicant on the ground of criminal antecedents. Hence, considering the above facts and circumstances and in view of discussion supra, I pass the following order :-

(a) Bail Application is allowed.

(b) The applicant who is facing trial in Sessions Case No.68/2017 pending on the file of Additional Sessions Judge, Nashik arising out of

C.R.No.296/2016 is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand only) with one or two solvent sureties in the like amount, to the satisfaction of Additional Sessions Judge, Nashik.

(c) The applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial.

(d) The applicant shall furnish his permanent address and temporary address, if any, and his contact details to the concerned Court.

(e) The applicant shall not change his residential address without prior intimation to the concerned Court.

(f) The applicant shall not interfere with the first informant and the other witnesses in any manner.

(g) An undertaking to the aforesaid clauses (c) to (f), shall be filed by the Applicant, in the trial Court prior to his release on bail.

(SMT. ANUJA PRABHUDESSAI, J.)