

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 1736 OF 2018**

Shriganesh Jayawantrao Raskar. ..Applicant.

V/s.

State of Maharashtra. ..Respondent.

Mr. A.P. Mundargi, Sr. Counsel I/b. Mr. Priyal Gopaldas Sarda, advocate for applicant.

Mr. S.S. Pednekar, APP for State.

Mr. R.B. Bhise, P.C.Kondhwa Police Station, Pune City.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : AUGUST 10, 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 21/1/2108 in Crime No. 37 of 2018 registered at Kondhwa Police Station for offence punishable under section 302 read with section 34 of the Indian Penal Code and under section 37(1) read with section 135 of the Maharashtra Police Act.

*Talwalkar*

3           It is the case of the prosecution that on 19/1/2018 Dr. Mohammad Ansari of Satyanand Hospital had informed the police that there is medico legal case as one Neval Bomi Battiwala has come for treatment. He has sustained injuries and the history of assault was given. On 20/1/2018 the statement of Neval Battiwala was being recorded. He had informed the police that on 19/1/2018 at about 8 p.m. a car was parked in front of his house to which he has objected. The driver had turned down the objection and had asked Mr. Neval to speak to the owner. The applicant happens to be the owner of the vehicle. There were verbal altercations and Neval was asking for licence. It appears that the applicant got annoyed and he alongwith two employees assaulted Neval. In the course of recording of his statement, the injured had started feeling uneasy. The doctor had put him on Oxygen. However, he expired and hence, offence was registered under section 302 read with section 34 of the Indian Penal Code.

4           In the course of investigation, the statement of doctor was recorded and he informed that Neville had been to the hospital with the history of assault. He had sustained injuries. The doctor had given him first aid. The X-ray of swollen elbow was taken. Orthopedic doctor had also prescribed certain medicine. Neval had informed that his relatives are not residing in India. According to Dr. Ansari, he wanted to give

statement to the police and thereafter, go home. He was taken to Day-care unit. The police had arrived and was recording statement of Neval. Suddenly he had started feeling uneasy as if he had got fits. He had not responded to the medical treatment and had expired. The reason for the assault was trifling in nature. In the course of altercation, the applicant had suddenly chosen to assault the complainant. It is alleged that the complainant was assaulted by iron rods, stones and stick.

5            Learned Senior Counsel submits that in fact, it was a tommy which was used for fixing puncture wheel and there were implements in the car and not in hand. On perusal of post mortem notes, it appears that the injured had sustained traumatic injuries in the nature of contusion and abrasions. However, internal damage was done.

6            Taking into consideration nature of material collected in the course of investigation and the fact that the applicant has not used any specific weapon to assault the complainant. He was residing opposite the house of the applicant. It could be a case of assault in the course of grave and sudden provocation. Hence, the applicant deserves to be enlarged on bail.

7           The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered for discharge application or at the time of trial.

8           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 reside in Bibwe wadi, Kondhwa, Lulla Nagar for a period of 6 months from the date of this order.

(iv)           The applicant shall not tamper the evidence.

9           The application is disposed of accordingly.

**[SMT. SADHANA S. JADHAV, J.]**

Aruna  
Sandeep  
Talwalkar

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by Aruna  
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