

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

BAIL APPLICATION NO.1813 OF 2018

Yojnesh Laxman Jamghare

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Nilesh Pandey i/b. Equajuris, Advocate for the Applicant.
Mrs.G.P. Mulekar, APP for the Respondent - State.

.....
CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 22, 2018.

P.C. :

This is an application for bail under Section 439 of Code of Criminal Procedure. The offence was registered vide C.R. No.I-609 of 2017, with Manpada Police Station, District-Thane, on 26th October, 2017, for the offences punishable under Sections 302, 325, 323, 143, 147, 148 and 149 of Indian Penal Code ("IPC", for short). However, while charge-sheet was filed for the offence punishable under Section 304 (II) of IPC, along with other offences.

2 Applicant was arrested on 27th November, 2018. He was remanded to custody from time to time. Applicant had preferred an application for bail before the Sessions Court, which was rejected by order dated 29th March, 2018.

3 The case of the prosecution is that, one unknown person alighted from the truck on the date of incident. There was quarrel between the said person. The unknown person tried to destroy the articles from shop. Thereafter, he assaulted some person outside Saloon. He also inflicted complainant. Thereafter, the said person occupied driving seat of tempo and tried to drive it. The said tempo was driven in zig-zag manner and the crowd had gathered at the scene of the offence. Persons gathered had removed the said person from Tempo. The said person assaulted by mob. His hands were tied. The injured succumbed to the injuries. The offence were registered under Section 302 of IPC, and subsequently as stated above. Charge - sheet is filed for offence punishable under Section 304(II) of IPC.

4 Learned counsel for the applicant submitted that admittedly there is no intention to commit murder, which is evident from the fact that charge-sheet is filed for the offence under Section 304(II) of IPC. The unknown person was assaulted as he tried to drove the vehicle in a zig-zag manner endangering life of people. He was assaulted by people gathered at the scene of offence. No specific role has been attributed to the applicant. It is submitted that the other accused who were attributed similar role were granted bail.

5 Learned APP submitted that the injured was mercilessly assaulted by the mob of people including the applicant. The CCTV footage shows the presence of the applicant at the scene of offence and participation in assaulting the victim. The mobile click recording clearly shows that the applicant had tied the hands of the deceased and assaulted him. It is submitted that there is recovery of clothes from the applicant which resembles the clothes which were seen in CCTV Footage. Thus, the presence of the applicant is established as one of the assailants.

6 I have perused the charge-sheet. The deceased had quarrel with some persons. He started assaulting people. He tried to drive vehicle rashly appending danger to several persons gathered at the place of incident. It appears that the deceased was aggressive and the mob had assaulted him. Charge - sheet indicate that about 100 to 150 people are involved in the crime. However, some of them were arrested. It is the prosecution case that all of them had assaulted. The said accused were granted bail by the Sessions Court. While granting bail to the co- accused, it was observed that it is very difficult to assume exact role of each and every participant. Applicant's presence is recorded in

the CCTV Footage and mobile click. However, it is pertinent to note that allegedly several persons had assaulted the deceased. Only on the basis of nature of evidence collected during the investigation, it is not necessary to continue the custody of the applicant. On completing investigation, the investigating authority has felt that it is not the case of Section 302 of IPC, and, charge-sheet has been filed under Section 304 (II) of IPC. The applicant is in custody for almost one year. All other arrested accused are granted bail. There are no reported antecedents against the applicant. In view of the above, bail can be granted to the applicant.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1813 of 2018, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.I-609 of 2017, with Manpada Police Station, 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 shall attend Manpada Police Station, District-Thane, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m, till further orders;
- (iv) Applicant shall not tamper with the evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)