

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

CRIMINAL BAIL APPLICATION NO. 1830 OF 2018

1. Vishnu Chandrabhan Yadav	... Applicants
2. Narsingh Paras Yadav	
Vs.	
State of Maharashtra	... Respondent

...

Mr. Rajesh Jaiswal for the applicants.
Mrs. G.P. Mulekar, APP for the Respondent-State.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 3rd SEPTEMBER, 2018.

P.C.

1. Applicants are seeking bail in connection with C.R. No. 343 of 2017 registered with Navghar Police Station for the offence punishable under Section 302 read with 34 of Indian Penal Code.
2. The prosecution case in brief is that one Kapoor Mahendra Gehlot complainant had lodged the first information report. He had seen some person chasing the deceased and assaulted him on the count that he committed theft of cell phone of one of the accused. The injured was tied to the poles and assaulted by wooden log. The complainant has not named any accused in the first information report. Subsequently, Identification Parade was conducted where he has identified four persons. The said persons

who had assaulted the injured. His statement was also recorded. After the identification Parade on 9th November, 2017 wherein he had stated that the person who identified by him in the parade had assaulted the deceased.

3. During the course of investigation, the Investigation Officer had recorded the statement of Shri Rambahadur Tarachand Goswami, Kaladhar Kevat and Sidbasant Yadav on 11th September, 2017. These witnesses have stated that applicants were standing at the place of incident, overt act of assaulted to the injured was attributed to other accused.

4. Learned counsel for the applicants submits that complainant had not remember to each incident as he was far away from the place of incident. Eye witnesses whose statement were recorded had not attributed overt act of assault to the applicants. Applicants are in custody from the date of arrest. They are not having any criminal antecedents assuming the prosecution case to be true there does not appear to be any intention of the accused to kill the deceased.

5. Learned APP submitted that the prosecution is relying upon the statement of the complainant who had subsequently identified the accused including the applicants as the persons who had

assaulted the deceased. It is submitted that CCTV footage which collected by the Investigation Officer shows that applicant were chasing the deceased. Therefore, there is sufficient evidence against the applicant.

6. On perusing the documents on record, it is crystal clear that FIR was lodged on 11th September, 2017 wherein it is alleged that some persons were assaulting the deceased by wooden logs on account of the fact that he is thief. The statement of three eye witnesses recorded after the incident specifically state that the applicant was standing at the scene of incident and no role was attributed to them. It is further noted that the deceased had assaulted by wooden logs. It is true that the complainant has subsequently identified applicants in Identification Parade, and in statement he stated that the persons identified by him had assaulted the deceased. In the light of specific statement of three eye witnesses that the applicants were standing near the place of incident and even CCTV footage only refers to applicants were amongst persons who were chasing the injured. There are no criminal antecedents against the applicants. In the circumstances, bail can be granted to the applicant.

ORDER

- i) Criminal Bail Application No. 1830 of 2018 is allowed.
- ii) The applicants are directed to be released on bail in connection with C.R. No. I-343 of 2017 registered with Navghar Police Station on furnishing P.R. Bond of Rs.20,000/- (Rs. Twenty Thousand only) each with one or more sureties in the like amount;
- iii) The applicants shall attend Navghar Police Station once in a month on first Monday between 10 a.m. to 12 noon till further order;
- iv) The applicants shall not tamper with the evidence and/or influence the prosecution witnesses.
- v) The application stands disposed off.

Sachidanand
Kuttan Nair

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(PRAKASH D. NAIK, J.)