

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

BAIL APPLICATION NO.1983 OF 2018

Dinesh Mukesh Waghmare	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
BAIL APPLICATION NO.1984 OF 2018**

Pranay @ Gotya Anil Gaikwad	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Aniket Nikam with Mr. Aashish Satpute for the Applicant.
Mr. N.B. Patil, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th OCTOBER, 2018.

P.C.:-

These are the applications under Section 439 of the Cr.P.C. filed by the aforesaid Applicants, who are arrested in C.R. No.35 of 2018 registered with Dattawadi Police Station, District-Pune, for offences punishable under Sections 143, 147, 148, 307, 323, 427, 504 and 506 r/w. 149 of the Indian Penal Code and Section 4(25) of the Arms Act.

2. Heard Mr. Aniket Nikam, the learned counsel for the

Applicant and Mr. N.B. Patil, the learned APP for the Respondent-State.

3. The learned counsel for the Applicants submits that the names of the Applicants were not disclosed in the FIR. However, in the supplementary statement, the first informant had stated that he had learnt that the main assailants Sonya and Monya were accompanied by the present Applicants and some others. Said statement was based on information given by one Sagar. The learned counsel for the Applicants further submits that co-accused Ijaj Shaikh, whose name was also disclosed by Abhijeet Adagale and Rohan Padole, were granted bail by this Court (Coram : Smt. Sadhana S. Jadhav, J.) by order dated 11th July, 2018 in Bail Application No.1422 of 2018. He submits that subsequently this Court had also granted bail to the co-accused Abhijit K. Patole by order dated 9th September, 2018 in Bail Application No.1883 of 2018. He further submits that the Applicants, who are similarly placed are entitled for bail on the ground of parity.

4. The learned APP submits that the statements of Abhijit Adagale and Rohan Padole prima facie shows involvement of the Applicants in commission of the said crime. He submits that offence is

of serious nature and hence the Applicants are not entitled for bail.

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

6. The records prima facie indicate that the aforesaid crime was registered pursuant to the FIR lodged by Suraj Kamble, who was a first year B.Com student in Shahu College. The FIR prima facie reveals that on 17th January, 2018 at about 11 p.m. while the first informant was talking to his friend near S.T. Colony, one Sonya @ Viraj Khandagale and Monya @ Apurva Khandagale, who are friends of Abhijeet Adagale came alongwith 10-12 other persons. Said Sonya @ Viraj and others were armed with weapons and they threatened him that they would not keep him alive. The first informant claims that Sonya @ Viraj tried to inflict blow on his head. However, he prevented the blow and in the process sustained injuries on his left hand. He further claims that Monya @ Apurva Khandagale also tried to inflict an injury on his neck. He once again put his left hand forward to prevent the blow and in the process sustained injury on his left hand. He has stated that he was scared and while he was running, someone inflicted a blow on his back. The persons, who had accompanied Sonya and

Monya had assaulted his friends by kicks and blows and later they damaged several vehicles, which were parked outside the building.

7. The medical certificate prima facie reveals that the first informant had sustained three incised wounds which were of grievous nature and caused by a sharp pointed weapon.

8. The statement of the first informant viz-a-vis the medical certificate and the other statements of the witnesses prima facie indicate that the co-accused Viraj Khandagale and Apurva Khandagale and 10-12 others had formed an unlawful assembly, armed with deadly weapons with an object of causing death to the first informant. The material on record prima faice reveals that in prosecution of their common object, they had inflicted injuries on the first informant by means of sickle/koyta. The spot panchanama reveals that the members of the said unlawful assembly had damaged several vehicles. Needless to say that the offence committed by the said persons is of serious nature.

9, The FIR prima facie reveals that Sonya @ Viraj Khandagale and Monya @ Apurva Khandagale were the ones, who had inflicted

injury on the hand of the first informant. The first informant had not seen the third person, who had inflicted injury on his back. Statements of Sagar Gaikwad and Abhijit Adagale prima facie indicate that these two Applicants as well as one Ijaj Shaikh and Abhijit Patole, were present at the place of the incident alongwith said Sonya and Monya. Their statements do not prima facie indicate that these Applicants were involved in inflicting injury on the first informant.

10. It is true that section 149 of the IPC recognises the principle of vicarious liability. However, the question whether the Applicants shared the “common object” and whether they had acted in furtherance of “common object” is a matter, which will have to be decided on the merits of the matter.

11. It is further to be noted that the co-accused -Ijaj Shaikh, who has also been named by the said witnesses has been granted bail by this Court on 11th July, 2018. The present Applicants are similarly placed and hence are entitled for bail on the ground of parity. The Applicants are in custody since 18.1.2018. Investigation is concluded and charge-sheet has been filed. Presence of the Applicant is no longer required for interrogation and investigation.

12. Considering the above facts and circumstances, the application is allowed on following terms and conditions:-

- (i) The Applicants, who have been arrested in C.R. No.35 of 2018 registered with Dattawadi Police Station, District-Pune, shall be released on bail on furnishing bail bonds of Rs.25,000/- each with one or two solvent sureties in the like amount.
- (ii) The Applicants shall furnish their permanent as well as temporary address, if any, and their contact details to the concerned investigation officer.
- (iii) The Applicants shall not change their residential address, without prior intimation to the concerned investigation officer.
- (iv) The Applicants shall not interfere with the witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)