

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2018 OF 2018

Rajesh Prembahadur Singh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Asmita Sarangdhar a/w. Ms.Sonali Patil and Mr.Sadhana Datar
for the applicant.

Mr.R.M. Pethe, APP for the respondent/State.

Mr.Vishwas Pathak, PSI, Ulhasnagar Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th SEPTEMBER 2018

P.C. :

1. The applicant is arrested in connection with CR No.I-46/2018 registered with Ulhasnagar Police Station for the offences punishable under Sections 307, 326, 427, 143, 147, 148, 149, 452, 506 of the Indian Penal Code as well as under Section 4(25) of the Indian Arms Act and under section 37(1) read with 135 Mumbai Police Act. He was arrested on 8th March, 2018. The FIR was lodged on 3rd March, 2018. The investigation is completed and chargesheet is filed.

2. The case of the prosecution is that complainant Omkar Surve is working with one Mr.Sachin Tiwari in the concern namely Shivansh Vaishnawi Developers at Shahad Gavthan, Ulhasnagar. One Shrikant is frined of Manish Roy. Roshan Zha and Kaushal Zha was on inimical terms with Srikant singh.

3. On 3rd March, 2018 at 6.30 pm, the complainant Omkar Surve and his friend Sachin Tiwari, Nitin Singh, Suresh Jaiswar , Chetan Patil and Sahil Shaikh were chatting in the office of Shivansh Vaishnawi Developers, Shahad. At that time, Kaushal Zha, Roshan Zha and the applicant with other accused entered into the office of the complainant with sword, scythe, knife, chopper and iron rod etc. in their hands. Rajesh singh threw one brick toward the complainant but it hit on the wall. Then all accused threw bricks towards the complainant. Then one unknown boy assaulted on the leg of Nitin Singh. Then Nitin Singh jumped out of the window. Rajesh Singh and Kaushal Zha gave scythe blow on the body of Sachin Tiwari. Accused Roshan Zha gave chopper blow on the stomach of the complainant which was obstructed by the complainant by his hand. In that effort, the complainant sustained injury to his right hand, small finger and on left hand wrist. The complainant sustained fracture injury. The complainant also sustained injury to his thigh. These accused attempted to commit murder of the complainant. The accused also threatened the neighbouring persons by wielding weapons. The accused then left

the place of incident. The injured were treated in the hospital for injuries sustained by them. The investigation completed and the chargesheet is filed

4. It is the case of the prosecution, that all the accused had assaulted the complainant and the other injured person by dangerous weapons. Both of them have sustained injuries.

5. The learned Advocate appearing for the applicant submitted that taking the prosecution case as it is, further detention of the applicant is not necessary. The applicant is in custody from 8th March, 2018. Investigation is completed and chargesheet is filed. The medical evidence does not corroborate with the version of the complainant and other injured witnesses. They are contradictory to each other. The applicant is 19 years old boy and he is a student. There are no criminal antecedents against him. The complainant and other injured were out of danger after alleged incident. The statement of Sachin Tiwari was recorded on 9th March, 2018. The statement under Section 164 of the Criminal Procedure Code of the complainant was recorded on 20th March, 2018. The learned Advocate for the applicant relied on the documents to show that the applicant is a student.

6. Per contra, the learned APP submitted that the accused are involved in serious crime. The role attributed to the accused

clearly makes out a case for attempt to commit murder. He relied on the injury certificate of the injured Sachin Tiwari. The injured has sustained serious injury on his head and other parts of his body. The injured was admitted to the hospital for the serious injury sustained by him. The role attributed to the applicant is corroborated with medical evidence. The applicant had assaulted Sachin Tiwari by using sword and gave blow on the head of Sachin Tiwari. The accused were armed with dangerous weapon like sword, scythe, knife, chopper and iron rod etc. It is submitted that in the alleged incident, specific overt act has been attributed to the applicant. It is submitted that about several accused are yet to be arrested and they are absconding. It is submitted that the application for bail may be rejected.

7. It is true that there was recovery of sword on disclosure by the applicant. However, on the perusal of the recovery panchanama, it appears that the said weapon was recovered from the open place. The statement of injured Sachin Tiwari was recorded by the police on 9th March, 2018 whereas the incident had occurred on 3rd March, 2018. The statement of the complainant was recorded under Section 164 on 20th March, 2018. It is true that medical certificate indicates that Sachin Tiwari and other persons had sustained injuries but it appears that they were out of danger shortly after the incident. The applicant is 19 year old boy. It is true that the applicant is not supposed to indulge in

the crime using dangerous weapon. The statement of witness attributes assault on Sachin Tiwari by dangerous weapons at the instance of applicant and others. The medical evidence appears to be contrary to it. Applicant is in custody from date of his arrest and chargesheet is already filed. There are no reported antecedents against the applicant. In these circumstances, exception can be made out to grant bail to the applicant. Hence, I pass following order;

:: ORDER ::

- (i) Bail Application is allowed.
- (ii) The applicant is directed to be released on bail in connection with CR No.I-46/2018 registered with Ulhasnagar Police Station on his furnishing P.R. Bond in the sum of Rs.20,000/- with one or more surety in the like amount.
- (iii) The applicant shall report the concerned police station once in a month on first Friday of the month between 10.00 to 12.00 noon till further orders.
- (iv) The applicant shall not tamper with evidence

Vina
Arvind
Khadpe

Digitally
signed by
Vina Arvind
Khadpe
Date:
2018.09.11
13:02:16
+0530

[PRAKASH D. NAIK, J.]