

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

BAIL APPLICATION NO. 2065 OF 2018

Shubham Vitthal Fadtare & Anr.

....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Kuldeep Patil a/w. Mr. Prashant S. Hagare for the applicants.

Mr. N.B. Patil, APP for the State.

Mr. A.B. Jadhav, API, Indapur Police Station, Pune(R) present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 05th SEPTEMBER, 2018.

P.C.:

. This is an application for bail under Section 439 of Criminal Procedure Code filed by the aforesaid applicants, who have been arrested in C.R.No.535/2018 registered with Indapur Police Station, Taluka Indapur, District Pune for offences punishable under sections 143, 147, 148, 307, 323, 504, 506 r/w. 149 of the Indian Penal Code.

2. Heard Mr. Kuldeep Patil, learned counsel for the applicant and Mr. N.B. Patil, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The case of the prosecution in brief is that on 05/07/2018, at about 05:30 p.m., the applicants and others had formed an unlawful assembly, armed with deadly weapons and in prosecution of the common object, they assaulted and caused injuries to the first informant, Nilesh Bansode and two others. It is alleged that the co-accused Pravin Shelar had inflicted injury on Nilesh Bansode as well as the first informant with a knife. It is alleged that on the same date, at about 6:00 p.m., while they were in the hospital, the co-accused Balu Shelar, the applicant-Shubham Fadtare and others visited the hospital and questioned them why they had assaulted his brother Pravin. It is alleged that they assaulted them with kicks and blows and that Balu Shelar picked up a cement brick lying outside the hospital and threw it on the head of Somnath Chavan, as a result thereof Somnath sustained head injury.

4. Mr. Kuldeep Patil, learned counsel for the applicant has stated that one of the co-accused/Pravin Shelar had also lodged the first information report alleging that on 05/07/2018, at about 05:30 p.m., the first informant-Ravi Jabade as well as Nilesh Bansode had assaulted him with knife and that the applicant and Nana Shende had intervened and had taken him to the hospital. Pursuant to the said first

information report lodged by Pravin Shelar, C.R.No.534/2018 has been registered against the first informant/Ravi Jabade and others for offences punishable under sections 143, 147, 148, 307, 323, 504, 506 r/w. 149 of the Indian Penal Code.

5. A perusal of both these first information reports *prima facie* indicate that on 05/07/2018 at about 05:30 p.m., both these groups had entered into a brawl in which the members of both groups had sustained injuries. As regards the role of the applicant no.1, the material on record *prima facie* reveals that the applicant no.1 was not armed with a weapon and that he had assaulted the first informant with kicks and blows. Suffice it to say that vicarious liability can be fastened with the aid of Section 149 of the Indian Penal Code only when there is material to show that the incriminating act was committed in prosecution of the common object of the unlawful assembly and this can be proved only on merits of the case.

6. The applicants are in custody since 06/07/2018. Applicant No.1 is a permanent resident of Kasaba Peth and Applicant No.2 is a permanent resident of Shende Mala, both Taluka Indapur, District Nashik. There are no chances of them fleeing from justice.

Considering the above circumstances and in view of the discussions supra, bail application is allowed on following terms and conditions :-

(a) The applicants who are arrested in C.R.No.535/2018 are ordered to be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand only) each with one or two solvent sureties in the like amount, to the satisfaction of Additional Sessions Judge, Baramati.

(b) The applicants shall remain present before the concerned Police Station as and when called.

(c) The applicants shall furnish their permanent address and temporary address, if any, and their contact details to the concerned Court.

(d) The applicants shall not change their residential address without prior intimation to the Additional Sessions Judge, Baramati.

(e) The applicant shall not interfere with the first informant and the other witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)