

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

BAIL APPLICATION NO. 2326 OF 2017

Ganesh Ramchandra Salunkhe. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Satyavrat Joshi, advocate for Applicant.

Ms. P.P. Shiinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 16, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 30th March, 2016 in Crime No. 40 of 2016 registered at Samarth Police Station, Pune for offence punishable under section 302, 506(2) read with

Section 34 of the Indian Penal Code and Section 37(1), 135 of the Maharashtra Police Act.

3 It is the case of the prosecution that on 28/3/2016 Amarchand Gopichand Ahirgavali lodged a report at the police station alleging therein that on 26/3/2016 there was quarrel between Ganesh Kamble and Somesh Anar in which Ganesh Kamble sustained head injury. On 28/3/2016 it was Rangpanchami and the boys, after playing colours had decided to have party and accordingly, had been to Amol Lodge, Somwar Peth, Pune for drinking Beer. At about 3.30 p.m. Ganesh Kamble made a phone call to Rajesh Anar and had abused him. Soon thereafter, at about 3.45 to 4 p.m. Somesh Anar alongwith the present applicant had been to Amol Lodge. It is alleged that Somesh was armed with sharp deadly weapon. He questioned why he abused his brother Rajesh and thereafter, assaulted Ganesh with the sharp edged weapon. When the complainant tried to intervene Somesh has hurled beer bottle towards complainant and had threatened him of dire consequences. Being afraid of the situation the complainant had

left the spot. Before the complainant left, Somesh Anar alongwith the present applicant had left the scene of offence. Ganesh Kamble had sustained bleeding injuries. The complainant had informed his mother as well as Rajesh Anar that his brother Somesh had brutally assaulted Ganesh Kamble. All friends had gathered at Amol lodge and thereafter had lodged the report.

4 Test identification parade was conducted in the course of investigation. Pursuant to the test identification parade supplementary statement of complainant was recorded on 18/4/2016 wherein he has identified the applicant as the person who was standing in the passage at the bottom of the staircase, when the alleged assault had taken place. The applicant has no criminal antecedent.

5 Upon perusal of papers of investigation, it is seen that no specific overt act is attributed to the present applicant except the fact

that he had accompanied Somesh Anar to the spot and had fled from the spot alongwith Somesh Anar.

6 Learned APP submits that in fact, in the present case, charge is framed and the next scheduled date is 22/1/2018 and therefore, according to the learned APP, applicant should not be enlarged on bail since the trial has almost commenced. The principal accused who is the author of the fatal injuries sustained by Ganesh Kamble is in custody. The applicant deserves to be enlarged on bail as the learned Counsel for the applicant submits that the applicant would at the most be liable for offence punishable under section 212 of the Indian Penal Code.

7 Be that as it may, in the given facts of the case, the applicant deserves to be enlarged on bail. However, co-accused Somesh Anar shall not claim parity with the present applicant as role of assault is attributed to him.

8 However, it is made clear that the observations made hereinabove are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The trial court shall not be influenced by the same while deciding the application for discharge or for quashing of FIR or at the time of trial.

9 Hence following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall not reside within the jurisdiction of Somwar Peth and Samarth Nagar till the conclusion of trial.

(iv) The applicant shall report to Shivaji Nagar Police Station on 1st and 3rd Sunday of each month between 10.30 a.m. to 12 noon till the trial. Upon failure to attend any two consecutive days, the prosecution is at liberty to move for cancellation of bail.

(v) The applicant shall not tamper with the evidence.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)