

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2853 OF 2018

|                                                                                                                                                         |            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Nilesh Parshuram Thakare, Age 27 years,<br>R/o.At Koshimbi, Post Vadavali,<br>Tal.Bhiwandi, District Thane<br>(Presently lodged at Kalyan Dist. Prison) | Applicant  |
| versus                                                                                                                                                  |            |
| The State of Maharashtra                                                                                                                                | Respondent |

Mr.Deepak More I/by Nilesh J. Mohite for applicant.  
Mr.Y.Y.Dabke, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 31<sup>st</sup> October 2018

PC :

1. This is an application for bail in CR No.I-219 of 2018 registered with Padgha Police Station. The offences were registered under Sections 325, 326, 354, 427, 323 r/w 34 of Indian Penal Code. Apparently the charge u/s 326 was subsequently altered to Section 324 of IPC.

2. The case of prosecution is that on 18<sup>th</sup> September 2018 when the complainant had been to Padgha Bazar for personal work, the applicant questioned him as to why he is bothering his father-in-law and assaulted him with fist blows. After the said incident the complainant returned to his residence at Village Dohade. While returning to Padgha the applicant came along with co-accused and assaulted the complainant by iron rod on his head and on his back. The complainant's daughter tried to intervene in the quarrel and at that time the applicant had allegedly held her hand and pulled her

due to which sleeve of her panjabi dress was torn and outraged her modesty. The FIR was registered and the applicant was arrested on 18<sup>th</sup> September 2018.

3. Learned counsel for applicant submitted that the applicant is in custody from the date of arrest. The injury caused to the injured person was simple in nature. The statements of witnesses and medical evidence is contradictory to each other. The statement of daughter of complainant is contradictory to the FIR. The charge was altered from Section 326 to Section 324. Hence, further detention of applicant is not necessary.

4. Learned APP submitted that first informant has attributed specific overt act to the applicant. He was armed with iron rod. The applicant has assaulted the injured person by iron rod. There is recovery of iron rod from him. There are eye witnesses to the incident. There are antecedents against applicant. Three cases are registered with Padgha Police Station against applicant vide CR Nos.26 of 2010, 158 of 2010 and 147 of 2012. It is therefore submitted that bail be rejected.

5. I have perused the FIR and the investigation papers produced by the investigating officer. The alleged incident had occurred on 18<sup>th</sup> September 2018. The applicant was arrested immediately and since then he is in custody. The injured person had sustained injury which is simple in nature. Admittedly the prosecution has altered the charge from Section 326 to Section 324 of IPC. Learned counsel for applicant also submitted that in the case registered vide CR No.26 of 2010, the applicant has been acquitted by the Court after trial. Similarly in the case registered vide CR No.I-147 of 2012 also, the

applicant has been tried and acquitted by the competent Court. The co-accused was granted anticipatory bail by the Sessions Court. I have perused the reasons assigned by the Sessions Court while granting anticipatory bail to the co-accused. There is contradiction in the statement of complainant and his daughter qua the charge in respect to outraging modesty. The medical evidence is contradictory to the version of witnesses. Taking into consideration the aforesaid circumstances, more particularly the fact that the applicant is in custody from the date of arrest, nature of injuries sustained by the injured, case for grant of bail is made out.

6. Hence, I pass following order :

#### **ORDER**

- (i) Criminal Bail Application No.2853 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-219 of 2018 registered with Padgha Police Station, the applicant be released on bail on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend Padgha Police Station once in a month on every first Saturday between 10 am and 12 noon till filing of charge sheet;
- (iv) The applicant is permitted to furnish cash security in the sum of Rs.20,000/- for a period of three weeks.

(PRAKASH D. NAIK, J.)

MST