

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

CRIMINAL BAIL APPLICATION NO. 203 OF 2019

Ankalesh Govind Rathod	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Milan Desai i/b. Mr.T.R. Patel for Applicant.
Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 22nd April 2019.

P.C. :

1] This is an application under Section 439 of the Code of Criminal Procedure for bail in connection with C.R. No. 15 of 2017 dated 12/01/2017 registered with Kandivali Police Station, Mumbai, for the offence punishable under Section 307, 324, 504, 506 read with 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

2] Heard the learned counsel for the applicant and the learned APP for the State. Perused the record of investigation.

3] The first information report is lodged by Mr.Jignesh P. Patel.

It is the prosecution case in nutshell that, due to earlier

enmity between the applicant and the co-accused Prashant Rathod with the first informant Jignesh and his uncle Anil Patel on 12th January 2017 at about 9.30 am when the informant along with his uncle proceeding on a motorcycle, the applicant along with co-accused obstructed them and assaulted them with an iron rod and wooden cricket stump. It is alleged that, the applicant assaulted with iron rod on the head of Anil.

During the course of investigation, the applicant came to be arrested on 13th January 2017 and after completion of investigation, police have submitted chargesheet.

4] The learned counsel for the applicant submitted that the applicant has not been arrested by the police from the spot and has been arrested subsequently. He submitted that, the first information report is a concocted story of the informant, as with a view to settle his earlier score, the applicant has been falsely implicated in the present crime. It is submitted that the co-accused Prashant has been released on bail by the trial Court. He submitted that, the police have completed investigation and submitted the chargesheet and therefore the further detention of the applicant in jail is not necessary. He, therefore, prayed that the applicant may be released on bail.

5] The learned A.P.P. vehemently opposed the application and submitted that the applicant has been earlier involved in four crimes bearing C.R. Nos.240 of 1992, 217 of 1998, 226 of 1998 and 227 of 1998 and if released on bail, the applicant may again commit an offence. The learned counsel for the applicant submitted that, those crimes are of the year 1992 and 1998 and the applicant has been acquitted in those crimes by the Court of competent jurisdiction and therefore, the said aspect of the antecedents may not be taken into consideration by this Court.

6] A perusal of the first information report and the statements of the witnesses would clearly indicate that the applicant was present at the scene of offence along with weapon/iron rod in his hand and has assaulted Anil on his head. The medical certificate issued by Bhagwati Hospital, Borivali (West), Mumbai, duly corroborates the said version. As far as the contention of the learned counsel for the applicant that, the first information report is concocted story of the informant is concerned, the applicant will have to prove the said fact at the time of trial and the said aspect at this stage cannot be taken into consideration. It is by now the settled position of law that, while considering the application for

bail, the Court has to take into consideration the following points :-

(i) Nature of acquisition and severity of punishment in case of conviction in nature of supporting evidence. (ii) Reasonable apprehension of tampering witnesses for apprehension of threat to the complainant, and (iii) *Prima-facie* satisfaction of the Court in support of charge.

Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Virupakshappa Gauda Vs. State of Karnataka*, reported in (2017) 5 SCC 406.

7] As noted earlier, there is sufficient material available on record to show the clear complicity of the applicant in the present crime and as submitted by the learned APP, the applicant was earlier involved in four crimes of serious nature. Though the applicant has been acquitted from the said crimes, the lodgment of the present crime shows his clear inclination towards criminality and indulging into commission of offence repeatedly.

8] In view of the above and after taking into consideration the gravity of the offence, this Court finds no reason to release the applicant on bail.

9] Application is, accordingly, rejected.

[A.S. GADKARI, J.]