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

CRIMINAL BAIL APPLICATION NO. 524 OF 2019

Suraj Fakira Khode	Applicant
V/s.	
The State of Maharashtra	Respondent

**WITH
CRIMINAL APPLICATION NO. 350 OF 2019**

Jayvant Ravjee Pagare	Intervener
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IN THE MATTER BETWEEN

Suraj Fakira Khode	Applicant
V/s.	
The State of Maharashtra	Respondent

Ms. Smita Gaidhani for the applicant
Mr. M. G. Patil APP for the State
Mr. Swapnil Newaskar for the intervener

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2019.

P.C.

Applicant is seeking regular bail in Crime No. 122/2018 registered with Mhasarul Police Station, Nashik for offence punishable under Sections 307, 504 r/w 34 of the Indian Penal Code, after arrest on 05/08/2018.

2 The prosecution story is, out of old rivalry, applicant attacked Bhushan, son of complainant Jayvant alongwith other two co-accused.

3 The learned APP while opposing the bail submits that eye witness to the incident namely Rajkiran Gaikwad whose statement was recorded on 17/09/2018, in categorical terms speaks of presence of the applicant with specific attribution of overt act. The learned APP would urge that applicant is specifically named in the F.I.R. which was lodged on 04/08/2018, so also in the statement of victim dated 05/08/2018. The learned APP would rely upon the statement of victim recorded under section 164 of Code of Criminal Procedure, 1973.

4 The learned APP is assisted by Shri. Newaskar, the learned counsel for the complainant who is permitted to intervene in the matter. He submits that present applicant belongs to rival group and there are threats to the life of the complainant and his son.

According to him, if released, there is likelihood of occurrence of similar offence at the behest of the applicant.

5 In the backdrop of contents in the complaint given by his father Jayvant in his complaint dated 04/09/2018 claimed that his son Bhushan was caught hold by applicant and co-accused Amol Nikam and Sachin Kadam assaulted Bhushan. Above narration of the complainant Jaywant is based on alleged narration made to him by Bhushan, victim in the crime. Bhushan in his statement recorded on next day i.e. on 05/09/2018 has not attributed any role or has not mentioned the presence of Sachin Kadam on the spot of the incident.

6 As such, *prima facie* it can be inferred that contents in the complaint to the extent of implication of Sachin by the complainant is contrary to the statement of victim himself.

7 Apart from above, statement of alleged eye witness, Rajkiran Gaikwad recorded on 17/09/2018 i.e. after period of more than 40

days, for which no convincing explanation is coming forward from the prosecution side.

8 It is the claimed by the complainant in his statement that he was intimated about the alleged assault by one Sagar Shinde. In the statement of Sagar Shinde recorded on 07/08/2018, reference is made to intimation of incident given to him by a woman, name of rickshaw owner Darshan Meswala was also referred to in his statement. The fact remains that statement of lady who informed to Sagar and auto driver/owner is also not recorded to find out the involvement of the applicant.

9 If the role attributed to the applicant in the statement of complainant and that of victim if appreciated, the same is to the extent of caught holding to said victim. There is no recovery of the blood stained clothes or any weapon from the applicant.

10 It is informed by the learned counsel for the applicant that the applicant was not present on the spot but was in his shop as could

be inferred from CCTV footage which are produced on record. The said angle also in my opinion needs to be looked into. There is one more angle to the matter in question and that being brother of the victim namely Bhushan is implicated as accused in the offence which is registered at the behest of applicant being Crime No. 152/2017 registered with Mhasarul Police Station, Nashik for offence punishable under sections 302, 307, 326, 143, 147, 148, 149 of the Indian Penal Code and sections 3/25, 4/25 of the Indian Arms Act and Section 135 of Maharashtra Police Act. The said aspect also needs to be kept on the back of mind while considering the case for regular bail. Investigation in the matter for the time being is already over and there are no antecedents, as such, applicant deserves to be released on bail.

(A) Applicant be released on bail in Crime No. 122/2018 registered with Mhasarul Police Station, Nashik on executing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(B) Applicant shall not influence witnesses or tamper with evidence

(C) Applicant, if found in similar type of offences, prosecution will be at liberty to seek cancellation of bail.

(D) Let this order be brought to the notice of DCP Zone-I, Nashk who shall appreciate the investigation carried out till date and if required, may advise corrective measures.

11 Application stands disposed of.

12 Intervention application also stands disposed of.

[NITIN W. SAMBRE, J.]