

HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 632 OF 2019

Ajay Kailas Mapare ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Satyavrat Joshi with Mr. Sunil S. Kamble, Advocates for the Applicant.

Ms. Sharmila S. Kaushik , APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 16th July, 2019.

P. C. :-

1. The Applicant is seeking his release on bail in connection with C.R.No. 195/18 registered with Kothrud Police Station, Pune under Sections 307, 326, 504, 506 read with 34 of the IPC, Section 37 (1) (3) of Mumbai Police Act and Section 3 read with 25 of Indian Arms Act.

2. The FIR in this case is lodged by one Raju Pathare on 23rd July 2018. The applicant is arrested on the same day. The first informant has stated in his FIR that, on 22nd July 2018, at about 9.00 p.m. he, one Rupesh and the present applicant were chitchatting near MSEB Tower. At around 10.15 p.m. the first informant and Rupesh started going towards their house. When they reached Raje Shivrai

Mitra Mandal, at that time the present applicant, one Banty Pasalkar and their two friends stopped them. The applicant abused the first informant and Rupesh. He was angry because they had teased him. The applicant then assaulted Rupesh with empty beer bottle, which he was carrying. Rupesh was assaulted on his head. He suffered bleeding injuries. When the informant intervened, the accused Bunty pointed a pistol towards the first informant's head and abused him. At that time, Rupesh, his relatives and friends came there. The accused Bunty then pointed his pistol towards them but since they were more in numbers, the present applicant, Bunty and their friends went away from there. Rupesh had suffered bleeding injury. Hence, he was removed to the hospital and then the first informant lodged this FIR.

3. The applicant was arrested on 23rd July 2018 and since then he is in custody. The investigation in this case is over and the chargesheet is already filed. The chargesheet contains statements of eye witnesses. There are at least six to seven eye witnesses viz. Shankar Sathe, Neeta Sathe, Mangesh Sathe, Pundalik Sathe, Sachin Sathe, etc. All of them have narrated the incident in the same manner as is mentioned in the FIR. Thus, allegations against the present applicant are that he assaulted Rupesh with an empty beer bottle on his head. The injuries

suffered by Rupesh are reflected in his injury certificate and medical papers. The injury certificate shows that there were three injuries on his head which required stitches. First injury was on left occipital region which required two stitches. The other one was over frontal region which also required two stitches and third one was on left portion of auricular region which required one stitch. The medical certificate described these injuries as simple injuries. The injured was discharged from the hospital on 27th July 2018. His condition at the time of discharge was stable and the offence did not escalate to a higher degree.

4. Heard, Mr. Joshi, learned counsel for the applicant and Ms. Kaushik, learned APP for the State.

5. Learned counsel for the applicant submitted that the applicant is in custody for about a year. Though the section 307 of the IPC is applied, the injured has suffered only three simple injuries. Therefore, offence under section 307 is not made out. Co-accused Bunty Pasalkar, who had pointed pistol at first informant and other people had not actually used it. Therefore, there was no intension to commit murder of either informant or Rupesh. He, therefore, submitted that further custody of the applicant is not necessary.

6. As against this, learned APP relied on the entire chargesheet and submitted that the offence is serious. Co-accused has used pistol and the present applicant had assaulted the injured with an empty beer bottle and therefore, the applicant does not deserve to be released on bail.

7. I have considered the submissions advanced by both sides. As mentioned earlier, the injured had suffered three simple injuries. He was discharged from the hospital within four to five days. The injuries were not life threatening. Though applicant had assaulted Rupesh, before the incident the applicant was chitchatting with the injured and the first informant. Thus, incident was not preplanned. In any case, from the allegations, intention to commit murder is not made out. The applicant is already in custody for about a year. The investigation is over. Therefore, no purpose will be served by keeping the applicant in custody till conclusion of trial. However, looking at the nature of assault, some conditions are required to be imposed on the applicant. Hence, the order:-

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R. No. 195/18 registered with Kothrud Police

Station, Dist. Pune, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) The applicant shall not enter the limits of Kothrud Police Station till the conclusion of trial, except for attending court cases.

(iii) The applicant shall appear before the court on all dates in respect of the trial diligently.

(v) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)