

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

CRIMINAL BAIL APPLICATION NO.664 OF 2019

Vishal Laxman Gotarne

.. Applicant

Vs.

State of Maharashtra

.. Respondent

Mr. Subhash Jha a/w Mr. Hare Krishna Mishra I/b Law Global Advocates,
for the applicant.

APP Mr. S. R. Agarkar, for the State.

PSI Mr. S. D. Nilpatrevar, attached to Chakan Police Station, Pune.

CORAM : N.J. JAMADAR, J.

**DATE : 14TH MAY 2019
(VACATION COURT)**

P.C.

1. This is an application under section 439 of the Code of Criminal Procedure, for enlarging the applicant on bail. The applicant has been arraigned for the offences punishable under sections 307, 324, 325, 326, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, for having formed an unlawful assembly and, in prosecution of the common object of the said assembly, attempted to commit murder of the first informant Sachin Pandey and for having committed other offences.

2. The gravamen of indictment against the applicant is that there was a dispute between the first informant and a juvenile in conflict with law, who was a tenant of the first informant, over the non-payment of the rent of the demised premises. On 19/10/2018, at about 11.30 p.m., the informant was called near Peacock Hotel, on the pretext of collecting the due rent. The said juvenile in conflict with law was present thereat alongwith 18 to 20

persons, including the applicant. The applicant ascertained the identity of the first informant as the landlord of the said juvenile in conflict with law and thereupon all the accused assaulted the informant by means of fist and kick blows and stones. It is further alleged that the applicant had given a blow by means of iron rod on the head of the first informant and exhorted the other accused to finish him off.

3. After the completion of investigation and finding the complicity of the accused, the charge-sheet has been lodged against the applicant and the co-accused for the aforesaid offences.

4. In the application, it is contended that the prosecution has converted a case punishable under section 324 of the IPC to that of the attempt to commit the murder by taking recourse to unjustifiable means. It is contended that the first informant has not at all sustained any grievous injury. Nor the injuries recorded in the injury certificate correspond with the version of the informant and the prosecution witnesses that the first informant had sustained bleeding head injury. The first informant and the other prosecution witnesses have conveniently changed their version to suit the prosecution and falsely implicate the applicant for offence punishable under section 307 of the IPC, without a case being made out for the same.

5. An affidavit-in-reply of Mr. Sanjay Nilpatrevar, the investigating officer, is tendered. The prosecution has resisted the applicant on the ground that the applicant has played the role of the principal aggressor. The applicant has made discovery relating to the recovery of the iron rod. A strong case is made out against the applicant. In the event, the applicant is released on bail, there is every possibility of the applicant tampering with

the evidence and threatening the prosecution witnesses. Thus, the applicant may not be released on bail.

6. Heard the learned counsel for the applicant and the learned APP for the State.

7. The learned counsel for the applicant, after taking me through the FIR and contrasting the same with the subsequent supplementary statements of the first informant and the prosecution witnesses, strenuously urged that a case of simple hurt has been converted into attempt to commit murder, so as to detain the applicant behind the bars. Attention was invited to the injury certificate issued by Unicare Hospital dtd.20/10/2018 to buttress the submission that the first informant had not sustained any injury on head. The investigation is complete and charge-sheet has already been filed. In the circumstances, there is no justification to deny the bail to the applicant, urged the learned counsel for the applicant.

8. In opposition, the learned APP submitted that this court, while dealing with the Anticipatory Bail Application of a co-accused Shubham Mhaske, has observed that the injuries sustained by the first informant can be attributed to the principal accused Vishal Gotarne and Shubham Kumar Singh. It was further urged that as the material on record establishes the complicity of the applicant, the applicant may not be released on bail.

9. It is imperative to note that the version, which was reported at the first point of time, by the first informant, did not attribute either the weapon of assault, i.e., the iron rod, to the applicant or the intent to

commit the murder. The first informant had initially reported that all the accused had assaulted him by means of fist and kick blows and stones. The role, that was attributed to the applicant, was that the applicant had ascertained the identity of the first informant as the landlord of the juvenile in conflict with law. A perusal of the initial statements of the alleged eyewitnesses recorded on 20/10/2018 also indicates that none of the witnesses had then claimed to have seen the applicant armed with the iron rod. If this factor is considered, in juxtaposition, with the injury certificate dtd.20/10/2018, it becomes abundantly clear that the specific case that the applicant had assaulted the first informant by means of iron rod and had exhorted the other co-accused to finish off the first informant had not seen the light of the day till the supplementary statement of the first informant came to be recorded. Thus, the initial FIR was recorded under sections 324, 143, 147, 148, 149, 323, 504, 506 of the IPC.

10. Undoubtedly, if during investigation, the complicity of the accused for aggravated offence is made out, the investigating officer, is within his right, to add the aggravated offences. However, in the instant case, in the backdrop of material of record, especially the version reported at the earliest point of time, it appears that the applicant has made out a case for enlarging him on bail. So far as the observations made by this court, while deciding the anticipatory bail application of co-accused Shubham Mhaske, it would suffice to note that they were made at different stage of the proceedings and in the context of the application for pre-arrest bail.

11. The apprehension on the part of the investigating agency that the applicant may tamper with the prosecution evidence and threaten the

witnesses, can be taken care of by imposing appropriate conditions.

12. In view of the above, I am inclined to exercise the discretion in favour of the applicant. Hence, the following order :-

ORDER

1. The application stands allowed.
2. The applicant/accused Vishal Laxman Gotarne be released on bail, in C. R. No.979 of 2018, registered with Chakan Police Station, Pune, on furnishing a P. R. bond of Rs.20,000/- (Rupees Twenty Thousand Only) and a surety in the like amount.
3. The applicant shall not tamper with the prosecution evidence.
4. The applicant shall not threaten or induce any of the prosecution witnesses.
5. Bail before the lower court.

[N.J. JAMADAR, J.]