

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

CRIMINAL BAIL APPLICATION NO.823 OF 2019

Nitin Gajanan Thorave Applicant

versus

The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.490 OF 2019
IN
CRIMINAL BAIL APPLICATION NO.823 OF 2019**

Nitin Gajanan Thorave Applicant

IN THE MATTER BETWEEN -:

Bhagwan Haribhau Salokhe Intervener

versus

The State of Maharashtra Respondent

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- Mr.Ganesh Gole i/b. Ritesh Ratnam, Advocate for Applicant.
- Mr.Kuldeep Patil, Advocate for Intervener in APPP No.490/19.
- Mr.S.H. Yadav, APP for the State/Respondent.
- Mr.Sachin Gawade, Posai, Karjat Police Station present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 20th JUNE, 2019**

P.C. :

1. The Applicant is seeking bail in connection with C.R.No.101/18 registered with Karjat Police Station, Raigad, under sections 304, 323, 504, 506 r/w 34 of the Indian Penal Code. Initially, the offence was registered u/s 302, 323, 504, 506 r/w 34 of the Indian Penal Code. However, subsequently during the investigation, the police dropped the charge of commission of offence u/s 302 of the IPC, but instead scaled it down to section 304 of the IPC.
2. The FIR is lodged in this case by one Bhagwan Haribhau Salokhe. He has given history of dispute between his relatives on one hand and the Applicant's relatives on the other. He has mentioned that there was dispute regarding ownership of a piece of land. They had a long history of litigation. Ultimately, before the incident, the order was passed by the Commissioner under the Revenue law in favour of the Applicant's father. Therefore the dispute had taken an ugly turn.

3. On 13/06/2018, some ladies from the informant's family were working in an agricultural field. It is the case of the first informant that the present Applicant, his father and others obstructed them. Those ladies informed the first informant. The first informant and his cousin Walku came to the agricultural field. They were discussing the circumstances amongst themselves. They decided to lodge FIR and therefore they started to go to police station. It is the case of informant that about 03.30 p.m., on 13/06/2018, they were waiting on the road for getting Rikshaw. At that time, the present Applicant, his father and one Yogesh Kashinath Thakare came in a Kwid car. The Applicant was driving the vehicle at a high speed and rammed into Walku straight away. Walku fell down. The Applicant allegedly again took the car in reverse gear and with high speed again ran over Walku. It is his case that that persons who were present nearby, obstructed the car and questioned the Applicant. Thereafter there was some altercations between the Applicant's group and the informant's group. Thereafter the Applicant went away towards Karjat side. Walku was taken to

Karjat Government Hospital and thereafter to MGM Hospital at Kamothe. While taking treatment, he succumbed to his injuries and therefore the FIR was lodged.

4. Investigation in this offence is over, charge-sheet is already filed. The Applicant was arrested on 04/07/2018. During investigation, the police found out that the offence u/s 302 of IPC was not made out, instead it was a case u/s 304 of IPC.
5. The investigation papers include the post-mortem notes which show that the deceased had died because of head injury. There was a fracture to parital bone. At this stage, there is no dispute that the deceased had died because of the car driven forcefully by the accused on his person.
6. Heard learned Counsel Mr.Ganesh Gole for the Applicant and learned APP Mr.S.H. Yadav for the State as well as learned Counsel Mr.Kuldeep Patil for the Intervener.

7. Learned Counsel Mr.Gole invited my attention to the statement of eyewitnesses who were supporting the case of the first informant. They were Baby Kaluram Salokhe, Geeta Gajanan Salokhe and and Usha Devram Salokhe. All of them were present at the spot as mentioned in the FIR. They have supported the case of first informant and have given similar statements. The important fact of their statements is that the statements were recorded on 27/07/2018 i.e. more than a month after the date of the incident.

8. Mr.Gole also invited my attention to the statements of independent eyewitnesses namely Manohar Basore, Anil Eknath Hadap, Jivan Dagadu Patil and one Sarang Suresh Karale. All of them are independent witnesses and their story is materially different from that of the first informant. All of them have stated that on 13/06/2018 at around 02.30 p.m. the Kwid car in question was intercepted by a crowd carrying weapons like iron pipes, iron rods, wooden logs etc. All of them mounted assault

on the car. The driver and other passengers were trying to come out of the car, but they were prevented. The car was attacked, windshields were broken. One of the passengers could come out, however the other two could not. The driver tried to force his way out by driving the car. While he was going away in a high speed, the car was driven over one of the persons in the crowd. He fell down on the road. Thereafter the car went away from the spot.

9. Mr.Gole invited my attention to the medical papers in respect of the present Applicant, which show that on that day the Applicant had suffered fracture, for which he had to undergo surgery.
10. Mr.Gole further relied on the FIR lodged by father of the Applicant, wherein he had described the attack on the car, though of course there is no reference to the injuries suffered by Walku because of driving of the car.

11. Mr.Gole therefore submitted that the present Applicant was not one of the aggressors. He and his car was attacked and he had no option, but to leave from the spot in his car and for which he had right of private defence to save himself.

12. As against this, Mr.Yadav for the State as well as Mr.Patil for the Intervener submitted that the Applicant had committed the offence u/s 304 of IPC, which is a serious offence and therefore bail should not be granted.

13. I have seen the Panchanama in respect of the car. The car was damaged. The panchanama shows that it was attacked, windshields were broken, the car was damaged because of the assault.

14. Taking into consideration the statements of the eyewitnesses recorded by the police, it is more than apparent that the Applicant's car was attacked by the group of the first informant. The statements of the independent eyewitnesses were also recorded u/s 164 of Cr.P.C. and they have given a

similar story as mentioned in the police statement. Therefore at this stage, there is strong reason to believe that the Applicant had genuine apprehension that if he did not go away from the spot in his car by any means, he would be attacked to death. In this view of the matter, the action on the part of the Applicant cannot be terms as any intentional act of committing culpable homicide. It is also quite apparent that he had right of private defence as mentioned under section 100 of the IPC. The facts of the case also point out that the Applicant had right of private defence which he could extend to causing death. At this stage, section 100 of IPC appears to be applicable in this case. The investigating agency has applied section 304 of IPC and not section 302. That means at the worst, the Applicant can be said to have exceeded his right of private defence. Though, of course ultimately this question can be decided by the trial Court during trial. However, looking at the facts and circumstances of the case at least for consideration of bail application, it is more than clear that the Applicant has made out a case for his release on bail. In this view of the matter, the following order is passed :

ORDER

- (i) The Applicant is directed to be released on bail in connection C.R.No.101/18 registered with Karjat Police Station, Raigad, 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) Application stands disposed of accordingly.
- (iii) Intervention Application filed along with the Bail Application is also disposed of.

(SARANG V. KOTWAL, J.)