

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

CRIMINAL BAIL APPLICATION NO.979 OF 2019

Victor Alex D'souza

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.A.S. Khandeparkar a/w Mr.S.N. Rajpurohit i/b.
Khandeparkar & Associates, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.
- PN D.V. Naik, Sawantwadi Police Station, Sindhudurg, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th JULY, 2019

P.C. :

1. Learned Counsel for the Applicant tenders a copy of the charge-sheet. The copy is taken on record. The Investigating Officer is present.

2. The Applicant is seeking bail in connection with C.R.No.207/18 registered with Sawantwadi Police Station, Sindhudurg, under sections 307, 201 of the Indian Penal Code.

3. The FIR is lodged on 23/11/2018 by one Devdit Anthony Fernandes. She has stated in her FIR that there was a dispute between the first informant and her husband Anthony regarding land bearing survey No.161, Hissa No.6 at village Charhata, Taluka Sawantwadi. They had put fencing around that land. But the present Applicant had removed it. The same thing was repeated on a couple of occasions. There was a civil suit filed by the first informant and her husband against the present Applicant, which was still going on. In short, there was a long standing dispute between the Applicant and the first informant's husband. On 23/11/2018 Anthony had gone for a walk with his dog. At around 07.30 a.m. when he came in front of house of the Applicant, the Applicant gave a blow with Bamboo on the face of Anthony. One neighbour Ropin Ligor D'Souza raised shouts. The first informant rushed there. She saw that her husband had suffered injury below his right eye and there was bleeding from nose. It is her case that the Applicant then came towards her. However it is further mentioned in the FIR that the Applicant himself and one Louis Fernandes removed

the injured Anthony to hospital at Sawantwadi. Based on these allegations the FIR is lodged.

4. The Applicant was arrested on the same day i.e. 23/11/2018 and since then he is in custody. Investigation is over and the charge-sheet is filed. The investigation papers contain statement of the first informant recorded u/s 164 of Cr.P.C. It also contains statement of the victim and his medical papers.

5. The statement of the injured Anthony is important. He has categorically stated that, when he was walking in front of the house of the Applicant, the Applicant assaulted him with Bamboo on his face. His version is supported by the medical papers, which show that the injured Anthony had suffered fracture near his eye. At this stage, the story of the first informant and her husband is sufficiently corroborated by the medical papers.

6. I have heard learned Counsel Mr.A.S. Khandeparkar for the Applicant and learned APP Mr.Prashant Jadhav for the State.
7. Mr.Khandeparkar submitted that there is a possibility of false implication because of earlier dispute. He submitted that in any case even assuming the story to be true, since the date of incident the injured has fully recovered. The injuries though were serious, those were not life threatening injuries and therefore the offence has not escalated to higher degree. He further submitted that the investigation is over and therefore custody of the Applicant is not necessary.
8. Mr.Jadhav opposed these submissions and opposed grant of bail. He submitted that the offence is serious and the injured had suffered fracture near his eye which was quite dangerous.
9. I have considered these submissions. Undoubtedly, at this stage, there is sufficient material against the Applicant

showing that he has assaulted the injured with Bamboo. However there are mitigating circumstances in his favour. Though, the injured was at his mercy and the Applicant could have caused much more serious damage, the Applicant did not do so. The allegations are that he gave only one blow on the face of the injured. After he fell down, the Applicant did not assault him on any vital parts and did not beat him to death. Secondly, the Applicant himself removed the injured to the hospital. These factors are also important and have to be taken into consideration.

10. The investigation in this case is already over. There is no further necessity of the Applicant's custody. In this view of the matter, the Applicant deserves to be released on bail. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.207/18 registered with Sawantwadi Police Station, Sindhudurg, 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.

(SARANG V. KOTWAL, J.)