

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

BAIL APPLICATION NO.991 OF 2019

Amol Rajendra Nikam Applicant

versus

The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.1127 OF 2019
IN
BAIL APPLICATION NO.991 OF 2019**

Bhushan Jaywant Pagare ... Intervener

IN THE MATTER BETWEEN

Amol Rajendra Nikam Applicant

versus

The State of Maharashtra Respondent

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- Mr. Sanjeev Kadam I/b. Vilasini Balasubramanian, Advocate for Applicant.
- Mr. S. H. Yadav, APP for the State/Respondent.
- Mr. Sumant Deshpande, Advocate for the Intervener.
- Mr. Sandip R. Patil, PSI, Mhasarul Police Station, Nashik present.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.122/2018 registered with Mhasarul Police Station, Nashik under Sections 307, 504 r/w. 34 of IPC and under Section 135 of the Mumbai Police Act.

2. The FIR is lodged by one Jaywant Pagare on 4/8/2018 in respect of assault committed on his son Bhushan. It is mentioned in the FIR that, on 4/8/2018, at about 6.30 p.m., one Sagar Shinde came to the informant and told him that his son Bhushan was assaulted near his shop. The informant went there. He found that his son was lying in injured condition. The informant asked him as to what had happened. His son told him that the present applicant, one Sachin Kadam, Ashok Nikam and Suraj Khode came to his shop and started assaulting the victim with sickle. To save himself he took that blow on his hands. Co-accused assaulted him with a stone on his head. Other assailant Suraj Khode had caught

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hold of the victim. On this basis, the FIR was lodged. The investigation was carried out. The applicant was arrested on 5/8/2018 and since then, he is in custody.

3. Heard Mr. Sanjeev Kadam, Ld. Counsel for the Applicant, Mr. S. H. Yadav, Ld. APP for the State and Mr. Sumant Deshpande, Ld. Counsel for the Intervener.

4. Mr. Kadam submitted that co-accused Sachin Kadam and Suraj Khode were similarly placed and they are already granted bail by this Court vide orders passed in BA No.524/2019 and BA No.744/2019. He submitted that on the ground of parity the applicant also deserves to be released on bail. He further submitted that the statement of the victim is important and careful reading of the statement shows that some unknown person and not the applicant had assaulted the victim. He further submitted that the applicant is in custody since 5/8/2018 and his further custody is not necessary.

5. As against these submission, Ld. APP and Ld. Counsel for the Intervenor submitted that the applicant was carrying a deadly weapon like sickle. Ld. Counsel for the Intervenor expressed his apprehension that if he is released on bail, the applicant may cause harm to the informant and his family.

6. I have considered these submission. The statement of victim himself was recorded on 5/8/2018. He has described the incident in detail. He has stated that two persons came on motorcycle. Two of them assaulted with sickle, other one assaulted with stone and the third one was holding him. He has given description of the three assailants. He has not named any of the assailants. He has narrated the incident in his statement. However, after such narration, he has stated that 10 to 15 minutes before the incident, he had seen the present applicant and one Suraj Khode alongwith a third person travelling in that area on a motorcycle. The victim knew the present applicant and others. He has not stated that the present applicant and the other unknown persons assaulted him. Therefore, the victim's statement

practically exonerates the present applicant. The statement given by father of the victim in the F.I.R. pales in comparison with the victim's statement. There is one more alleged eye witness Rajkiran Gaikwad. He has described the incident and has named the present applicant and other co-accused as the assailants who had assaulted the victim. He has given specific role to all the accused. However, his statement is recorded much belatedly i.e. after 14 days on 17/9/2018. The injury certificate shows that the victim had suffered three injuries on right hand , two injuries on left hand and multiple CLW on head. The offence is not escalated any further. The applicant is in custody since 5/8/2018. As observed in the order of the Sessions Court, the applicant was a witness in a murder case where the victim's brother was an accused. Thus, there was previous enmity between the parties and that could provide reason for falsely implicating the present applicant. Considering all these aspects and in particular taking into account that the co-accused are granted bail, on the ground of parity, I am inclined to grant bail to the present applicant. Hence, the following order.

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ORDER

(i) The applicant is directed to be released on bail in connection with C.R. No. 122/2018 registered with Mhasarul Police Station, Nashik, on his executing P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) The applicant shall report to the concerned Police Station on first Monday of every month between 1.00 p.m. to 2.00 p.m. for six months.

(iii) The application is disposed of.

(SARANG V. KOTWAL, J.)