

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

BAIL APPLICATION NO.1163 OF 2019

1) Ajay Motiram Thakre; and	
2) Mayur Motiram Thakre	.. Applicants
Vs.	
State of Maharashtra	.. Respondent

**WITH
BAIL APPLICATION NO.1164 OF 2019**

Keval Suresh Gaikar	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Rajiv Patil, Senior Advocate i/b. Mr.Balkrishna G. Tangsali,
Advocate for the Applicants in BA.1163 of 2019.

Mr.R.D. Suryawanshi, Advocate for the Applicant in BA 1164 of
2019.

Mr.Deepak Thakare, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 21, 2019.

P.C. :

The Applicants in both these Applications are seeking bail in connection with C.R.No.I-337 of 2015, registered with Ambarnath Police Station, District-Thane, for the offences punishable under Sections 302, 307, 142, 143, 147, 148, 149 and

341 of Indian Penal Code (“IPC”, for short) and under Sections 4 and 25 of Indian Arms Act as well as under Sections 37(1) and 135 of the Maharashtra Police Act.

2 The prosecution case is as follows:

First Information Report (“FIR”, for short) was lodged by Vinod Bhor on 25th December, 2015. It is alleged that the complainant is carrying on business of building material supplier to construction developers within Ambarnath area. Municipal Councilor Ramesh Sahebrao Gunjal @ Pappu Gunjal was conducting business of supply of building materials and labour. The complainant used to look after his business. On 25th December, 2015, at about 10:15 a.m., the complainant went to meet deceased Pappu Gunjal at his house. He was informed that the deceased has gone to Saloon at Morivali Naka. The complainant immediately went to Morivali Naka. While proceeding through MSEB office, he noticed that Pappu Gunjal was accosted by 15 to 16 persons. They were armed with weapons like sword and chopper. They assaulted Pappu Gunjal. Sachin Chavan, Pintya Gaikar, Ramdas Gaikar, Vishal Javeri, Mayur Thakre, Jagdish Thete, Deepak Kalimbe, Guttu Vargade,

Omkar Gaikar, Keval Gaikar, Ajay Thakre, Shankar Chalwadi, Ashish Shrivane and others were assailants. At that time, Nitin Gunjal came to the spot of incident on motor cycle from village Morivali. At that time, Shankar Chalwadi was holding chopper, Pintya Gaikar was holding sword. Ramdas Gaikar and Omkar Gaikar were holding choppers in their hand. While assaulting the victim they were shouting, don't leave him and finish. The victim fell down. After the assault, the assailants sat in Innova car and motorcycle and left towards Morivali Naka. Four months ago, Shankar Chalwadi and Ashish Shrivane had attacked manager of Pappu Gunjal on issue of salary. Sachin Chavan, Pinty Gaiykar, Ramdas Gaikar, Vishal Jhaveri, Mayur Thakur, Jagdish Thate, Dipak Kolimbe, Guddu Varghade, Omkar Gaikar and Kewal Gaykar are residing in Morivali village and they had enmity with Pappu Gunjal on account of previous disputes. He was taken to hospital. On the way to hospital, the victim stated that Pintya, Mayur, Omkar, Ramdas along with other persons did not do the right thing and fell unconscious. During the course of investigation, statements of other eye witnesses were recorded. On completing investigation, charge-sheet was filed.

the Applications submitted that the Applicants are falsely implicated in this case. Although, their names are reflected in the FIR, no specific role has been ascribed to them. They were not armed with weapons. It is further submitted that except the statement of the complainant, the other eye witnesses have not referred to presence of Applicants at the scene of offence and participation in the crime. It is further submitted that the role attributed to them by the complainant is vague in nature. The statements of other eye witnesses to the incident who gave details of the incident naming the assailants in the crime, have not referred to the participation of the Applicants in the crime. It is further submitted that the victim had sustained serious injuries, which is apparent from the medical certificate and it is difficult to digest that he would refer to names of any person since he was not in a position to speak. Thus, the alleged dying declaration, cannot be accepted. It is submitted that there are no criminal antecedents against Keval Gaikar. It is further submitted that the statement of Pramod Balaram Rasal, who alleges the conspiracy hatched by the accused was recorded on 11th February, 2016. It is also submitted that the said witness has not referred to the name of the Applicant in Bail Application No.1164 of 2019. Thus, the said Applicant was not party to any such

conspiracy. In absence of any strong evidence, no importance can be given to the statement of the complainant. The Applicants are in custody from the date of their arrest. It is further submitted that the co-accused who was attributed similar role has been granted bail by this Court. Reliance is placed on the order passed by this Court granting bail to the co-accused Jagdish Thete. The Court has taken into consideration the infirmities in evidence and granted bail to said accused. The Applicants may be granted bail on ground of parity.

4 Learned APP strongly opposed grant of bail. It is submitted that the accused were inimical against the victim. The crime is of serious nature. The victim had sustained several injuries. Most of the accused were armed with dangerous weapons. Applicants were named by the first informant in the complaint. The statements of witness Pramod Rasal refers to conspiracy hatched by the accused to liquidate the deceased. Merely on account of the fact that the other witnesses have not referred to the participation of the Applicants in the crime, would not absolve the Applicants from the crime. It is submitted that the antecedents of the accused who has been granted bail are not apparently brought to the notice of the Court. He further

submitted that delay in recording the statement of the witnesses will be explained even during the trial which would be a matter of evidence. He further submitted that the capacity of the victim to disclose names of some of the persons to the complainant on account of the injuries sustained by him is required to be considered at the time of trial and this is not the stage to appreciate the evidence. All the Applicants were absconding and they were arrested after a period of about nine months. There are criminal antecedents against all the Applicants. They are involved in serious cases. On 10th June, 2016, N.C. Complaint was filed by the cousin of deceased against Jagdish Thete and Kewal Gaikar with Thane Nagar Police Station, alleging threats issued by the said accused in the vicinity of Court at Thane stating that if the complainant visits the Court again on next date, he would face similar consequences like deceased, Pappu Gunjal. It is submitted that on 7th January, 2016, the elder brother of deceased, Umesh Gunjal was threatened by two unknown persons that he would be killed and C.R.No.8 of 2016 has been registered under Sections 341 and 506(2) read with 34 of IPC. The relatives of arrested accused went near house of deceased and threatened that the other family members of deceased would face same consequences, if complaint is not withdrawn. N.C. Complaint is

lodged with Ambernath Police Station, vide N.C.No.1071 of 2016 under Section 506 of IPC. There is evidence of mobile tower location near the place of incident against Applicant Keval Gaikar.

5 I have perused the charge-sheet. The alleged incident had occurred on 25th December, 2015. First informant has referred to the names of the accused who had participated in the crime. Presence of the Applicants were referred to by the complainant. He stated that Applicants were amongst the assailants. He has also stated that some of the accused were armed with weapons and they assaulted the victim. It is also stated that the persons who were not assaulting with weapons were shouting and instigating not to spare deceased and he should be killed. During the course of investigation, the prosecution has recorded the statements of other eye witnesses to the incident. It is undisputed that the said said eye witnesses have not named the Applicants as persons who participated in the crime. The version of complainant is first in point of time, recorded after the incident. Statement of Pramod Rasal was recorded on 11th February, 2016. He has referred to conspiracy hatched by the accused. The complainant has also stated that deceased, while taking him to hospital has uttered names of

Pintya, Mayur, Omkar and Ramdas and he fell unconscious. The said evidence has been assailed by the learned Counsel for the Applicants stating that the condition of the injured person at that point of time was not such that he would be able to speak to the complainant, in the light of the serious injuries sustained by the deceased. According to the complainant, the victim has referred few names and he fell unconscious. He has not disclosed the entire incident, which appears to be natural conduct. While considering the Application for bail preferred by the co-accused Jagdish Dethé, it appears that the antecedents of the said accused were not brought to notice of Court. The Applicants are involved in other cases. Five cases were registered against Ajay Thakare viz. C.R.No.378 of 2006 under Sections 324, 504, 34 of IPC, C.R.No.259 of 2007 under Sections 341, 143, 147, 323, 504 of IPC, C.R.No.I-54 of 2013 under Sections 143, 147, 149, 336, 427 of IPC, C.R.No.48 of 2014 under Sections 143, 147, 148, 427 of IPC and C.R.No.160 of 2015 under Sections 326, 323, 34 of IPC. Two other cases were registered against Mayur Thakre vide C.R.No.I-54 of 2013 under Sections 143, 147, 149, 504, 506, 323 of IPC and C.R.No.I-48 of 2014 under Sections 143, 147, 149, 427 of IPC. The Applicants were absconding. The Applicant Kewal Gaikar was arrested on 14th November, 2016. Ajay Thakare was

arrested on 21st November, 2016, and, Mayur Thakre was arrested on 14th November, 2016. There is evidence in the nature of tower location of Applicant Kewal Gaikar near the place of incident. Learned APP has also pointed out that the accused were absconding for a period of nine months and N.C. complaint was lodged against Kewal Gaikar. Motor cycle was recovered from Ajay Thakare. Considering all the circumstances, although bail is granted to the co-accused, in the light of the aforesaid observations, I do not find that case for grant of bail is made out. Hence, both the Applications are required to be rejected.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application Nos.1163 and 1164 of 2019, are rejected.

(PRAKASH D. NAIK, J.)