

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

CRIMINAL BAIL APPLICATION NO. 1113 OF 2018

Santosh Raghunath Ghadge

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Harshad Sathe i/b. Mr.B for the applicants.
Mrs.A.A.Taklakar, APP for the respondent – State.
Mr.Mujawar, PI, Mumbra Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY 2019

P.C. :

1. This is an application for bail in CR No.I-188 of 2016 registered with Mumbra Police Station, Thane for the offences punishable under Sections 302, 307 443 of the Indian Penal Code, 1860.

2. The prosecution case is that the applicant is implicated as accused no.4. He is arrested on 16th April 2016. The prosecution case is that on 16th April 2016, the complainant who is younger brother of Gulchand D. Nikam has alleged that there used to intermittent quarrel between wife of Gulchand, Priti and his mother. The member of maternal family of Priti used to pacify the quarrel

between couple and they used to visit the house of Gulchand frequently. On 15th April 2016, the complainant heard hue and cry from the house of his brother Gulchand. Then he visited the house of Gulchand and noticed that his brother, the father of Priti and Priti's brothers and other relatives were also present in house. There was verbal altercation between members of both families. Priti, her sister and brother-in-law were abusing the mother of the first informant. In the course of altercation, Akash Utekar picked up a scissor lying in the house, and all of them assaulted Sameer Mangesh Dewalkar who happened to be friend of the informant. Sameer Dewalkar had succumbed to the injuries. According to the witnesses, some of the accused caught hold of Sameer Dewalkar while he was being assaulted by Aakash Utekar and abetted in commission of crime. It is further alleged, that the injured person, Sunny Pawar was also assaulted by Aakash Utekar with scissor and the applicant and other accused caught hold of him at the time of assault.

3. The statements of witnesses were recorded under Section 161 of Cr.P.C. Consistently the role attributed to the applicant is that he had accosted Sunny Pawar and not Sameer Dewalkar. According to the prosecution, even Sunny Pawar had sustained injuries.

4. Learned Counsel for the applicant submitted that the some of the accused are granted bail by this Court. There was no intention to commit murder. The incident had occurred at the spur of moment. The role attributed to the applicant is holding the injured Sunny Pawar while he was being assaulted. The applicant is in custody almost for a period of 2 years and 9 months.

5. Learned APP submitted that the injured person as well as deceased were assaulted by the accused. The applicant has played role of aiding and abetting assault. It is further submitted that the statement of witnesses recorded under Section 164 of the Cr.P.C. It is stated that the applicant had facilitated the co-accused in holding Sunny Pawar as well as Sameer Dewalkar. It is further submitted that although incident had occurred at the spur of moment. The applicant/accused ought to have realized the situation and could have noticed the intention of the assailant causing severe injuries to the injured and the deceased.

6. Perused the chargesheet, it is the case of the prosecution, that there used to be quarrel between wife of the brother of the complainant and his mother. Both families had altercation on the date of incident. During the course of quarrel one of them picked up

a seizure lying in the house and assaulted Sameer Dewalkar and Sunny Pawar. Apparently, Sameer Dewalkar had succumbed to the injuries. Sunny Pawar had also sustained injuries. The applicant is being attributed role of holding Sameer Pawar as noted under statement of 164 of Cr.P.C. However, there is variations in the statements recorded under Section 164 of Cr.P.C.. Admittedly, incident had occurred at the spur of moment. There is nothing to indicate that it was not a pre-planned attacked. The applicant is in custody from the date of arrest.

7. Learned APP submitted that chargesheet has been filed and only one witness has been examined. However, about 15 to 20 witnesses are yet to be examined in this case. As noted above, the applicant is in custody from 16th April 2016. Considering the factual aspect as stated above, the applicant cannot be detained further and case for grant of bail is made out.

8. Hence I pass following order;

ORDER

- (i) Bail Application No.1113 of 2018 is allowed;
- (ii) The applicant is directed to be released on bail in

connection with CR No.I-188 of 2016 registered with Mumbra Police Station, Thane, on his furnishing PR Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report to the concerned police station once in a month on the first Saturday of every month between 11.00 am to 1.00 pm till further order;
- (iv) The applicant shall not tamper with evidence;
- (v) Bail Application stands disposed off.

[PRAKASH D. NAIK, J.]