

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.1361 OF 2019**

Sunny Ashok Kondalkar ] ... Applicant

Versus

The State of Maharashtra ] ... Respondent

Mr. Aniket Nikam i/b Mr. Vivek Arote, Advocate for the Applicant.  
Smt. A.A. Takalkar, APP for the State/Respondent.  
PSI Kavita Rupnar attached to Hinjawadi Police Station, Pune present.

**CORAM :- SARANG V. KOTWAL, J.**  
**DATE :- 16<sup>th</sup> JULY, 2019.**

**P. C. :-**

1. The applicant is seeking bail in connection with C.R. No.232/2018 registered with Sinhgad Road Police Station, Pune u/sec.307, 364, 323, 504, 506 r/w 34 of I.P.C. and u/sec. 135 of the Maharashtra Police Act.

2. The FIR in this case is lodged by one Jyotiba Kharat. He has stated that on 20/05/2018 he had gone to Goyalganga Hotel. At that time, one Rahul Kamble along with three of his friends came on two motorcycles. Rahul and his friends assaulted the informant Jyotiba

with bamboo on his head, back and legs and forcibly made him sit on one of the motorcycles. He was taken to a hill at Tukai Nagar. There Rahul Kamble started abusing him and started assaulting him with iron pipes. He was given two to three blows on his head by Rahul. Rahul was saying that the first informant had assaulted his brother, therefore the informant was being assaulted. The first informant explained to him that he did not assault his brother. Rahul called his brother at that spot. The informant's brother told Rahul that the informant had not assaulted him. Thereafter, Rahul called informant's friend Sagar. He came there. He tried to pacify Rahul and thereafter he took the informant to his house and then admitted him to hospital. The informant had lodged his FIR on these allegations.

3. The applicant was arrested on 23/05/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed. The charge-sheet contains statement of Sagar Rajguru. Sagar has stated that on 20/05/2018 in the afternoon, he was informed by one Amit that informant Jyotiba was assaulted by Rahul Kamble and his friends and he was left at Tukai Nagar. Sager went there and took him to hospital. Sagar thus, does not corroborate the informant's story about

going to the hill and talking with Rahul. There are statements of Dinesh Kumar and Shubham Ubale who have narrated about the first part of the incident when the informant was forcibly taken away by the accused.

4. The supplementary statement of the informant Jyotiba was recorded on 18/07/2018 wherein he has added that two of the friends accompanying Rahul Kamble had also assaulted him with wooden sticks. Apart from these statements, the charge-sheet contains medical papers of injuries suffered by the first informant. The medical papers show that the injured Jyotiba had suffered acute subdural hematoma along left temporal region and right parietal region. There was cerebral oedema and fracture of right coronal structure. He also had suffered three fractures on first, second and third ribs. From the medical papers, it appears that the injured was discharged from the hospital on 25/05/2018.

5. Apart from this, there is evidence in the form of test identification parade held on 24/07/2018, in which the informant Jyotiba had identified the present applicant and others as the persons who were accompanying Rahul.

6. Heard Mr. Aniket Nikam, Ld. Counsel for the Applicant and Smt.A.A. Takalkar, Ld. APP for the State/Respondent.

7. Mr. Nikam submitted that the applicant had no motive to commit the assault. The main role of the actual assault is given to Rahul. The FIR mentions that, Rahul had assault the injured on head with iron rod. This role is not ascribed to any of Rahul's friends. He submitted that, the test identification parade was held belatedly and it is not clear from the test identification parade as to what role exactly the present applicant had played according to the first informant. He further submitted that the injured was discharged from the hospital on 25/05/2018 and there was no danger to his life. He submitted that the main role is attributed to Rahul Kamble. Therefore, the present applicant deserves to be released on bail.

8. As against this, Ld. APP submitted that the supplementary statement of the first informant shows that apart from Rahul Kamble, his friends also assaulted him with wooden sticks. Therefore, the injuries caused to the first informant can be attributed to the present applicant. She submitted that the offence is u/sec. 307 of I.P.C. and

therefore, it is a serious offence. She therefore opposed this application.

9. I have considered these submissions. The applicant is in custody since 23/05/2018 i.e. for more than a year. The applicant had no motive. The prosecution case at the highest shows that the applicant had accompanied Rahul. The main assault is attributed to Rahul Kamble as mentioned in the FIR. Though in the supplementary statement further role is also attributed to the friends accompanying Rahul. The first informant's supplementary statement is recorded after two months. The statement of important witness Sagar does not exactly corroborate the story of the first informant.

10. The other two witnesses speak only about the first part of the incident. Therefore, there is no independent eye witness describing the incident of assault which had taken place on the hill. The injured was in hospital till 25/05/2018. He had suffered head injuries and ribs fracture. The offence has not escalated to a higher degree. Taking over all view of the matter, I am of the opinion that since the investigation is already over, no purpose would be served by keeping

the applicant in custody during pendency of the trial. The main role as well as the motive is attributed to main accused Rahul Kamble. In this view of the matter, the applicant has made out his case for his release on bail during pendency of the trial. Hence, the following order.

***ORDER***

1. The Applicant is directed to be released on bail in connection with C.R.No. 232/2018 registered with Sinhgad Road Police Station, Pune, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**