

**CRIMINAL APPLICATION NO.732 OF 2019
IN
CRIMINAL APPEAL NO.612 OF 2018
WITH
CRIMINAL APPLICATION NO.946 OF 2019**

Rupesh Sambhaji Bhagat and Another	...Applicants
vs.	
The State of Maharashtra and Another	...Respondents

Mr. Kuldeep Patil, for the Applicants in Cri. Appln.No. 732 of 2019
Mr. S.B. Shetye, for the Applicants in Cri. Appln. No. 946 of 2019
Mr. V.B. Konde-Deshmukh, APP for the Respondents-State.

**CORAM : INDRAJIT MAHANTY &
N.B. SURYAWANSHI, JJ.**

DATE : AUGUST 29, 2019

P.C.:

. This is an application for bail in an Appeal filed by the Applicants challenging the conviction against the original accused Nos. 1 and 2 wherein the learned Additional Sessions Judge, Raigad convicted the Applicants along with co-accused Nos. 3 to 5 for the offences punishable under sections 307, 147, 148, 341, 504 read with 149 of the Indian Penal Code thereby sentencing the Applicants/accused to suffer rigorous imprisonment for seven years and to pay fine of Rs. 500/-. The co-accused i.e. original accused Nos. 3 to 5 were sentenced to suffer rigorous for five years

and to pay fine of Rs. 500/- for the offence punishable under section 307 read with 149 of the Indian Penal Code.

2. The case of the prosecution in short is that on 1st June, 2008 in the evening Pratik Dongre and Sujeet Patil went for roming in Kamothe. At about 8.30 p.m. when they were returning from Khandeshwar railway station, near the office of corporator Mahendra Kawale, the Applicants/accused Nos. 1 and 2 along with others obstructed the motor cycle of Pratik Dongre and started abusing Pratik and Sujeet in filthy language on account of quarrel which took place between them prior to four months on the count of cricket match. Pratik called Manohar Mhatre on cellphone and asked him to come near Maruti temple at Motha Khanda. Manohar Mhatre, his brother Balkrishna, their friends Amol, Pravin and Bharat went near Maruti temple where Manohar asked the reason for quarrel to the said persons gathered there and tried to rescue the quarrel. The Applicant/accused No. 1 Rupesh gave blow of chopper on the forehead above the left eye of Balkrishna (P.W.2). At that time, Balkrishna raised his hand. Applicant/accused No. 2 Prashant gave blow of knife on the right side of stomach of Balkrishna. Bhushan (P.W.3) came there to intervene the quarrel.

At that time, Prashant gave blow of knife on his stomach at right side. Other accused persons have allegedly participated in the assault. Thereafter, P.W.1 Manohar Mhatre lodged complaint which was registered at C.R. No. 266 of 2008 under sections 307, 341, 504, 147, 148 read with 149 of the Indian Penal Code and under section 25(1-B)(b) of the Arms Act against five accused persons. The sessions trial No. 93 of 2010 was conducted where 11-12 witnesses were examined by the prosecution and the learned trial Judge after considering the evidence on record convicted the Applicants/accused as stated herein above.

3. The learned counsel for the Applicants/accused vehemently argued for releasing the accused on bail contending that there is no sufficient material/evidence to warrant conviction. P.W.2 Balkrishna the injured eye witness was a history sheeter. The accused are in custody since the date of judgment of conviction i.e .18th May, 2018 and initially they were kept behind the bars for approximately period of one month. The accused have not misused their liberty when they were on bail during the trial. The matter may take considerable time and not likely to come up for final hearing in near future considering the pendency of jail appeals.

Since the accused Nos. 3 to 5, who are released on bail, on the ground of parity, the applicants are also entitled to be released on bail.

4. The learned APP, so also the learned advocate for the victim vehemently opposed the prayer for bail.

5. We have heard the learned advocate for the Applicants/accused, learned APP for the State and learned counsel representing the victim. With the assistance of the learned counsel for the parties, we have perused the record.

6. At the stage of bail, we are not inclined to go through the entire evidence. However, the material brought on record by the prosecution shows that the Applicants/accused Nos. 1 and 2 are the author of serious injuries caused to P.W. 2 and P.W. 3. The material evidence brought on record by the prosecution shows that P.W. 2 Balkrishna suffered bone deep incised wound of 10 cm on the forehead above the left eye extending to scalp. The same was grievous in nature. The second injury suffered by this witness on his right side of abdomen measuring 2 x 3 cm going deep into

abdomen. After opening the abdomen, the jejunum i.e. upper part of small intestine was found to be damaged. So also the large intestine and the mesentry and the abdomen was found filled with blood. The injuries suffered by P.W. 2 were serious in nature and P.W. 2 was required to be hospitalized as indoor patient for 28 days. It has come in the evidence of P.W. 9 the medical officer that condition of P.W.2 was deteriorating and he was required to be re-operated. The medical certificate (Exhibit 78) is proved by P.W. 9. P.W. 3 suffered bone deep incised wound of 3 x 2 cm on his scalp which was also grievous. The medical officer has proved the medical certificate of P.W.2 and 3 at Exhibit 76 and 77 respectively. The medical officer (P.W. 9) has deposed that life of P.W. 2 and 3 was in danger due to injuries suffered by them.

7. Apart from the above, the report submitted by Police Inspector (Crime), Kalamboli police station through prosecution shows that there are criminal antecedents of Applicants/accused Nos. 1 and 2. So far as the Applicant/accused No. 1 Rupesh is concerned, two offences are registered against him at Kalamboli police station i.e. C.R.No. 377 of 2004 under sections 324, 323 and 504 read with 34 of Indian Penal Code and criminal case No. 557

of 2004 is pending against him. Another C.R.No. 266 of 2008 under sections 147, 148, 149, 341, 324, 504, 307 read with 4 and 25 (1-B)(b) of Arms Act is also registered against him. So also at Rabale police station C.R.No. 161 of 2013 under section 399, 402 of Indian Penal Code and section 37(1) read with 135 of Bombay Police Act and at Kamothe police station C.R.No. 88 of 2014 is registered for the offences under section 143, 146, 147, 148, 149, 323, 427 of Indian Penal Code and section 37(1) read with 135 of Bombay Police Act filed vide R.C.C.No. 635 of 2014 is pending.

8. So far as Applicant/accused No. 2 Prashant is concerned C.R. No. 99 of 2006 for the offence under sections 452, 324, 143, 147, 148, 149, 504 of Indian Penal Code read with 37(1) and 135 of Bombay Police Act is registered for which R.C.C.No. 460 of 2006 is pending. C.R. No. 26 of 2004 was also registered with Kalamboli police station under section 325, 324, 504 read with 34 of Indian Penal Code which appears to have been compromised.

9. Taking into consideration the fact that the Applicants/accused Nos. 1 and 2 are the author of serious injuries inflicted on P.W. 2 and 3, the fact of recovery of blood stained

clothes and weapons used in the crime at their instance and considering the criminal antecedents of the Applicants/accused, we are not inclined to release the Applicants/accused on bail. In this view of the matter, the claim of Applicants for parity is not sustainable. So far as the original accused Nos. 3 to 5, no serious injuries were attributed to them and they are sentenced to suffer rigorous imprisonment of five years whereas the Applicants/accused are sentenced to suffer rigorous imprisonment for seven years. Hence, the prayer for bail of the Applicants/accused is liable to be rejected and the same is rejected as such.

10. The Bail Application stands dismissed as such.

(N.B. SURYAWANSHI, J.)

(INDRAJIT MAHANTY, J.)