

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

**CRIMINAL APPLICATION NO.1070 OF 2019
IN
CRIMINAL APPEAL NO.918 OF 2019**

Sushil Manohar Gaikwad
Vs.

... Applicant

State of Maharashtra

... Respondent

Mr. Subhash Jha a/w Mr. Harekrishna Mishra & Mr. Sanjay Singh i/b
Law Global, advocates for the applicant.
Smt. S.V. Sonawane, APP for the State.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

DATE : 15TH OCTOBER, 2019.

P.C. :

1. The Appeal is admitted on 12th July, 2019.
2. This is an application for bail filed by the applicant/ original accused No.10. The applicant is convicted by the learned Sessions Judge-3, Nashik in Sessions Case No.266 of 2017, for offences punishable under sections 120-B, 143, 147, 148, 302, 307 r/w section 149 of the Indian Penal Code alongwith section 37(1)(3) r/w section 135 of the Maharashtra Police Act and to pay fine of Rs.25,000/-.

3. Heard the learned counsel appearing for the applicant and the learned APP for the State. With the assistance of the learned counsel and learned APP, we have perused the notes of evidence and judgment filed on record.

4. The learned counsel for the applicant argues that the evidence against the applicant is that PW-3 and PW-4 have referred in their Examination-in-Chief that the applicant alongwith the others was present at the time of assault and Amit Vyawahare and the present applicant were carrying chopper. The incident is 16th September, 2015. The name of the applicant was not mentioned in the FIR and subsequently in the supplementary statement of PW-3 and PW-4, dated 20th September, 2015, the name of the applicant is, for the first time, involved in the present crime. There is no recovery of chopper and the applicant was on bail during the trial and since the date of judgment, i.e., from 8th May, 2019, the applicant is taken in custody. No specific overtact is attributed to the applicant in the entire evidence and the applicant is convicted by invoking section 149 of the IPC. The applicant was on bail during the trial and he has not misused the liberty granted to him. The learned counsel prays for releasing the applicant on bail, pending the hearing and final disposal of the present Appeal.

5. The learned APP vehemently opposed the bail application on the ground that it has come in the evidence that the applicant was present with chopper at the time of assault. The learned APP states that the actual assault was by original accused

Nos. 1 to 3 and the applicant all along was present when the assault was going on. Hence, the learned trial court was justified in convicting the applicant by invoking the provisions of section 149 of the IPC. She states that the applicant is convicted for life, hence he should not be released on bail.

6. We have inquired as to whether the applicant has any criminal antecedents and the learned counsel for the applicant states across the bar that the applicant has no criminal antecedents. Taking into consideration the fact that there is no overtact attributed to the applicant and the chopper is not recovered, since the name of the applicant was not mentioned in the FIR and he came to be involved subsequently in the supplementary statements of the witnesses. The applicant was on bail during the trial and he has not misused the said liberty. This appeal is of the year 2019 and it will not be heard in near future, taking into consideration the pendency of the criminal appeals, we are therefore inclined to grant bail to the applicant. Hence, the following order :-

ORDER

- (i) Criminal Application No.1070 of 2019 is allowed.
- (ii) The applicant be enlarged on bail in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more sureties in the like amount.
- (iii) The applicant shall attend Sarkarwada Police Station, Nashik, for a period of three months on every Sunday between 11.00 a.m. to 2.00 p.m. and thereafter once in a month between 11.00

a.m. to 2.00 p.m.

- (iv) The applicant shall not try to pressurise or contact the prosecution witnesses.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)