

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

BAIL APPLICATION NO. 2202 OF 2019

Ganesh Arun Gaikwad	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
BAIL APPLICATION NO. 3228 OF 2019**

Prakash Laxman Margale	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Sachin H. Deokar, Advocate for the Applicant in Bail Application.
No. 2202 of 2019.

Mr. Harshal S. Patil, Advocate for the Applicant in Bail Application.
No. 3228 of 2019.

Mr. S. H. Yadav, APP for the State-Respondent.

Mr. V. V. Dige, PSI, Bharti Vidyapeeth Police Station, Pune, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th December, 2019

PC :

1. The applicant in Bail Application No. 2202 of 2019 was arrested on 8th December, 2018 and applicant in Bail Application No. 3228 of 2019 was arrested on 2nd April, 2019.

2. The FIR was registered with Bharti Vidyapeeth Police Station, Dist. Pune vide C.R. No. 657 of 2018 for offences punishable under Sections 302, 143, 147, 148, 149 of Indian Penal Code and under Section 4(25) of the Indian Arms Act & Sections 37(1)(3) and 135 of Maharashtra Police Act.

3. Complaint was lodged by Ganesh Shirke. He received call from mobile phone of his cousin Vinayak and the caller informed him that Vinayak is assaulted by 4 to 5 persons and he has been admitted to hospital. He went to hospital. He met friends of Vinayak, Sandip Gejge and Vikas Dhumal. Vinayak had called Ganesh Gaikwad to resolve dispute with Sandip Gejge. They further told that Vinayak, Sandip and Vikas went to meet Ganesh. They saw accused Ganesh, Vishal, Prakash, Bala, Gaurav and others. Vishal assaulted Vinayak by knief, Bala and Prakash assaulting by sickle, Ganesh threw piece of Mill Wheel (Grinder) on back of Vinayak.

4. The First informant is not eye witness. The statements of eye witnesses Sandip Gejge and Vikas Dhumal were recorded on 7/12/2018 and 8/12/2018 respectively. Both these witnesses have referred to the incident of assault and have attributed overt act to the assailants. Vishal, Bala and Prakash Renuse assaulted Vinayak by weapons. Ganesh Gaikwad was present. Ganesh picked up chattel lying at place of incident and there is on Vinayak which could not hit him and it broke in pieces. Ganesh picked up piece of Mill Wheel and assaulted on back of Vinayak. Vikas gave similar statement. It is pertinent to note that these witnesses have not referred to the name of the applicant Prakash Margale as one of the assailant. However, statement of witness Somnath Dattatray Gade was recorded on

10/12/2018. For the first time, the name of the applicant Prakash Margale is reflected in the said statement as one of the person who assaulted the deceased by fist and kick blows. Vikas Dhumal has not identified Prakash Margale in Test Identification Parade.

5. The role attributed to the applicant in Bail Application No. 2202 of 2019 is that he tried to assault the deceased by Mill Wheel however the blow was avoided. The Mill Wheel (Grinder stone) was broken. Thereafter the applicant has assaulted the deceased on his back by the piece of chattel.

6. Learned counsel for the applicant appearing in Bail Application No. 3228 of 2019 submits that he is entitled for bail on the ground of parity. The role assigned him is similar to co-accused Shubham Hangrage who has been granted bail by this Court by order dated 6th November, 2019 passed in Bail Application No. 2149 of 2019. The statements of the eye witnesses Sandip Gejge and Vikas Dhumal recorded on 7th December, 2018 and 8th December, 2018 had referred to the incident of assault. However, the said witnesses have not referred to name of the applicant as one of the assailants. However the statement of Somnath Dattatray Gade was recorded on 10th December, 2018 is referred to name of the applicant. Two other accused Bala Renuse and Atul Bhokan whose names were also

referred to for the first time in the statement of Somnath Gade and attributed overt act of assaulting the victim by fist and kick blows were granted bail by the Sessions Court. Shubham Hangrage was granted bail by this Court.

7. Learned advocate for the applicant appearing in Bail Application No. 2202 of 2019 submits that the applicant is assigned the role of assault by piece of Mill Wheel on back of victim. The injuries reflected in the post mortem report refers to the injuries by sharp weapon. There is no corresponding injury to overt act of applicant Ganesh Gaikwad.

8. Learned APP however submitted that there was common intention on the part of the accused who participated in the crime and assaulted the deceased. The applicant Ganesh had participated in crime. Prakash Margale has been referred by witness Somnath Gade. The co-accused were granted bail on the ground that there names were not referred by two eye witnesses and considering their role.

9. Prakash Margale is not referred by Sandip Gejge and Vikas Dhumal. He is not identified by Vikas Dhumal. He is entitled for parity with co-accused. The role assigned to Ganesh is stated above. He was not armed with weapon. The assault was on back of victim

and there is no injury corresponding assault. The applicant in Bail Application No. 2202 of 2019 is in custody from one year. On certain terms and condition the applicant can be granted bail. The applicant in Bail Application No. 3228 of 2019 is in custody for a period about 8 months.

10. Hence, I pass the following order.

ORDER

- i) Bail Application No. 2202 of 2019 and Bail Application No.3228 of 2019 are allowed;
- ii) The applicants are directed to be released on bail in connection with C.R. No. 657 of 2018 registered with Bharti Vidyapeeth Police Station, Dist. Pune on their furnishing PR. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount;
- iii) The applicant Ganesh Arun Gaikwad shall stay out of jurisdiction of Bharti Vidyapeeth Police Station, Pune and shall furnish the details of his place of residence to the Investigating Officer after he is released on bail. He shall report nearest police station, where he would reside once in a month on every first Saturday between 10.00 am. to 12.00 pm. till further order.

- iv) The applicant Prakash Laxman Margale shall report the concerned Police Station once in a month on every first Saturday between 10.00 am. to 12.00 pm. till further order.
- v) Bail Applications are stand disposed of accordingly.

(PRAKASH D. NAIK, J.)