

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2356 OF 2018**

Swapnil Yashwant Chaudhari

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. A. P. Mundargi, Sr. Counsel a/w Mr. Dheeraj Panchange,
Mr. Swapnil R. Chopade-Patil and Ms. Swapna Kode for the Applicant

Mr. A. R. Kapadnis, A.P.P for the Respondent-State

HC Mr. P. M. Shinde from Kalyan Taluka Police Station, Thane (R) is
present

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 12th JUNE 2019

P.C. :

1 Heard learned senior counsel for the applicant and the learned
A.P.P for the State.

2 By this application, the applicant seeks his enlargement on bail
in connection with C.R. No. I-197 of 2017 registered with the Kalyan
Taluka Police Station, for the alleged offences punishable under Sections
302, 325, 323, 504, 506, 143, 147, 148, 149, 427 of the Indian Penal Code
and under Sections 4 and 25 of the Arms Act.

3 Perused the papers. According to the complainant-Zoya Parvez Shaikh, an incident took place on 5th September 2017 at about 3:00 p.m, when her elder brother-Arun had come to her house for lunch. She has alleged that Suraj Chaudhary (original accused No.1) came there and started inquiring with her about Arun. She has stated that thereafter, the applicant, Yuvraj Panchange (original accused No. 2), one Pintya Ahire (original accused No. 4) and 5-6 others came there and started quarrelling with Arun for not renting them a vehicle. The said persons are alleged to have assaulted Arun with fist blows. It is alleged by the complainant that when her husband-Parvez intervened, all the said persons started assaulting him, however, when she intervened and begged for forgiveness, all the said persons left the spot. The said persons are alleged to have told the complainant to control her husband and brother or they will have to face dire consequences.

According to the complainant, the second incident is stated to have taken place on 6th September 2017 at about 6:30 p.m, when she, the

deceased Mehandi Shaikh (brother-in-law of the complainant) and her son were at home. According to the complainant, the accused persons (including the applicant) along with 4 to 5 persons came to the house and inquired about her husband and asked the complainant to leave the village. The said persons are alleged to have even threatened to kill her husband- Parvez. It is alleged by the complainant that she requested the accused persons to settle the dispute, pursuant to which, they agreed and left from the spot.

The third incident is stated to have taken place on the very same day at about 11:45 p.m. The complainant has alleged that her brother-Abhishek came running home and informed her that some persons were chasing her husband and that the said persons had damaged an Alto vehicle, which was near Suraj's (original accused No.1) house. It is further alleged by the complainant, that Abhishek also informed her that the people who were chasing Parvez, were armed with wooden sticks, steel rods and iron pipes. Pursuant thereto, the complainant and Mehandi Shaikh (complainant's brother-in-law) ran towards the spot to save Parvez. According to the complainant, when she ran towards the road, she saw

Suraj with an iron pipe, the applicant with a wooden log, Yuvraj with a wooden log, Ravi Dawange with a sword, Dokya @ Pintya with an iron pipe; Yashwant Chaudhari with an iron rod, Subhash Bhoir with an iron pipe and Maya Chaudhari, her daughter and one Jaya along with two to three unknown persons come running towards them. The complainant has alleged that the said persons asked for Parvez and asked them to leave the village. It is alleged by the complainant that she ran to look for her husband-Parvez, the other persons started assaulting Mehendi Shaikh, pursuant to which, she fell on him to protect him from the assault. She has stated that when she requested the accused persons not to assault the deceased, some of the accused pulled the complainant away from the deceased and assaulted her with fist blows. She has stated that all the accused assaulted Mehendi (deceased) with weapons which they were carrying. The complainant has also alleged that her brother-Abhishek and husband-Parvez were also assaulted in the said incident.

4 Mr. Mundargi, learned senior counsel for the applicant submitted that the applicant has been falsely implicated in the said case. He submits that Parvez is a history sheeter. He submitted that the

complaint/FIR lodged by the complainant-Zoya Shaikh is false and filed belatedly. Learned senior counsel further submitted that the incident as alleged by the complainant had not occurred on the time as alleged by the complainant and the same is evident from the cross FIR lodged by the applicant's brother-Suraj, which was registered vide CR No. 198 of 2017 as against the complainant's husband-Parvez, Mehendi Shaikh and others for the alleged offences punishable under Sections 324, 323, 352, 504, 34 of the Indian Penal Code.

5 A perusal of the FIR lodged by the applicant's brother-Suraj shows that some incident took place on 5th September 2017, but not as alleged by the complainant-Zoya. Suraj does not talk about the presence of the applicant in the said incident. It further appears that Suraj has, in his FIR, stated that on 6th September 2017, Parvez, a history-sheeter, called him at about 5:45 p.m. and told him that he wanted to meet him. He has stated that at about 6:00 p.m, he called Parvez and asked him to meet him, however, he did not come. According to Suraj, at about 10:00 p.m, he slept and that on 7th September 2017 at about 12:30 a.m, Parvez came to his house and started shouting and asked him to come out. He has stated that

his mother, father, the applicant and his brother came out. It is stated that Parvez was armed with a knife and Mehendi (the deceased) was armed with an iron rod. He has stated that two more persons were armed with iron rods. He has stated that all the persons were armed and that they had come in a red Alto car and a black coloured Pulsar motorcycle. According to Suraj, Parvez started assaulting him and that the said incident was witnessed by his friend, Manoj and Ganesh Goswami who was celebrating his birthday. He has stated that when Manoj questioned Parvez, Parvez assaulted him. He has further stated that Mehendi (deceased) also assaulted Manoj's friend Mahendra and Raju with an iron rod. Admittedly, the applicant has not received any injuries in the said incident. Learned senior counsel submitted that Parvez and Mehendi came to applicant's house and assaulted Suraj and thereafter the incident of assault on Parvez and Mehendi had taken place. He submits that the complainant-Zoya has falsely stated that Parvez and Mehendi were assaulted at about 11:45 p.m. on 6th September 2017, when infact, the assault on them had taken place on 7th September 2017 between 1:30 a.m. to 2:30 a.m. Learned senior counsel in support of the said submission relied on a few documents; i.e. the wireless message which is on page 87 of the application to show that the

date and time of the incident mentioned in C.R. No. 197 of 2017 is 7th September 2017 between 1:30 a.m to 2:30 a.m; and the medical case papers which have been annexed to the application. He submitted that soon after Parvez and Mehendi assaulted Suraj (applicant's brother), Manoj, Raju and Mahendra at 12:30 a.m. on 7th September 2017; the applicant took Manoj to the hospital at about 1:30 a.m. He relied on the medical case papers wherein there is an entry, which shows that patient-Manoj was brought by one Swapnil (applicant). The mobile number mentioned in the said medical case record is stated to be of the applicant. It may be noted that Manoj was admitted to the hospital as he sustained a stab injury over left lumbar region. The medical case paper obtained under the Right to Information Act (RTI) also shows that the said document has been signed by the applicant.

6 There are cross cases between the parties. The applicant has no antecedents. There is some discrepancy with respect to the sequence of events as narrated in both the FIRs. Whether the incident has taken place as alleged by the complainant-Zoya in her FIR or as alleged by Suraj in his FIR, is a matter which will be decided by the trial Court. Admittedly, the

applicant has not received any injuries. *Prima facie*, his presence on the spot is also doubtful, having regard to the medical report. Some of the co-accused who are also alleged to have assaulted Mehendi have been enlarged on bail.

7 Having regard to what is stated hereinabove, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Monday of every month between 11:00 a.m. to 12:00 noon, till the conclusion of the trial;

- (iii) The applicant shall not tamper the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant to file an undertaking with regard to clauses (ii) to (v), in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is allowed in the aforesaid terms and is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.