

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

**CRIMINAL APPLICATION NO.1411 OF 2016
IN
CRIMINAL APPEAL NO.169 OF 2016**

Raja @ Rajesh Bhalchandar Gavari

...Applicant/
Org. Accused No.6

Vs.

The State of Maharashtra

...Respondents

Adv. Mr. Jayant Bardeskar for the applicant.

Adv. Mr. Sachin Pawar for the intervener.

Mr. H.J. Dedhia, APP for the respondent-State.

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

ORDER RESERVED ON : 30TH SEPTEMBER, 2019.

ORDER PRONOUNCED ON : 4TH OCTOBER, 2019.

ORDER : (Per N.B. SURYAWANSHI, J.)

This is an application for bail by accused No.6, who is convicted by the learned Additional Sessions Judge, Thane for offences punishable under sections 143, 147, 148, 302, 307, 342, 336 r/w 149 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine amount. The appeal is admitted.

2. The learned counsel for the applicant argued that original accused Nos.2 and 7 are released on bail by this court and claimed bail on the ground of parity. The applicant was on bail during the trial. He states that the main allegations of assault by firearm are against accused Nos. 1, 4 and 5. Accused No.3, at the relevant time, was carrying hammer and accused No.6, i.e., the present applicant and others were carrying iron rods. It has come in the evidence that accused No.3 used hammer and accused No.6 and others used iron rods to break the glasses of the Scorpio jeep and caused damage to the said jeep, in which the deceased and eyewitnesses were travelling. Except this, there is no active role attributed to the present applicant and the murder is caused by firearm injuries. It is further argued that there are no injuries of iron rod on the person of the deceased. Hence, the bail is sought.

3. The learned APP as well as the learned counsel appearing for the victim vehemently opposed the bail application on merits.

4. We have gone through the record and proceeding of the matter and notes of evidence.

5. It is a matter of record that accused No.2, who is alleged to have played a major part in the trial, is released on bail on 5th April, 2019. The learned APP or the learned counsel for the victim were not able to point out that any injuries were caused due to iron rod. The applicant was on bail during trial and he was taken into custody at the time of pronouncement of the judgment.

6. During the course of argument, we called upon the learned APP to ascertain about the criminal antecedents of the applicant and the learned APP has placed on record the communication dated 18th September, 2019, of Sr. Police Inspector of Kalwa Police Station, District-Thane, wherein it is stated that there were three cases against the applicant, viz., (i) C. R. No. I 153/1997, under sections 385, 507, 34 of the IPC, (ii) C. R. No. I 137/1997, under sections 387, 120(B), 34 of the IPC, and (iii) C. R. No. I 178/2002, under sections 147, 148, 149, 302 of the IPC and the present case. The learned counsel for the applicant states at bar

that the applicant is acquitted in all the three crimes, which is not disputed by the learned APP. These were old cases in which applicant is acquitted.

7. In view of the facts and circumstances of the present case and on the ground of parity, we are of the opinion that the applicant is entitled for bail. Hence, the following order :-

ORDER

The applicant be released on bail during the pendency of the present appeal on following conditions :-

- (i) The applicant is released on bail of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two solvent sureties in the like amount.
- (ii) The applicant shall undertake that he shall continue to reside at the address, to be communicated by him during the pendency of the present proceeding and he shall not leave that address.
- (iii) The applicant shall not contact either complainant or any of the witnesses or their family members and not to indulge in any unlawful activities or business.

- (iv) The applicant shall report in the Trial Court on first working day in every month and mark his attendance with the office of Superintendent/Registrar of the Court.
- (v) Terms and Conditions of this order shall be complied with within three weeks from today.
- (vi) Failure to comply with these terms and conditions or to obey the same shall constitute breach of this order and the Trial Court shall in that event proceed to take him in custody in accordance with law.
- (vii) Application is accordingly allowed and disposed of.

(N.B. SURYAWANSHI, J.)

(INDRAJIT MAHANTY, J.)