

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

CRIMINAL BAIL APPLICATION NO.3014 OF 2018

Divakar Surendar Singh

.. Applicant

Vs.

State of Maharashtra

.. Respondent

Mr.Nitin Kamble for the applicant.

Mr.A.R.Kapadnis, APP for respondent-State.

CORAM : P.N. DESHMUKH, J.

DATE : 9th April 2019

P.C.:

1. Heard learned counsel for applicant, learned APP. Perused charge-sheet filed with application. One of co-accused involved in C.R. No.267 of 2016 registered with Khadak Police Station, Pune who is arrested on 23rd September 2016 has filed application for bail. Offence is registered for the offences punishable under Sections 302, 120B, 143, 147, 148, 149 of IPC and under Sections 3(25) of Arms Act and under Sections 37(1)(3) read with 135 of B.P Act.

2. Learned counsel for applicant submitted that in report, name of applicant is referred whose name is referred by deceased in his statement recorded in hospital, except for mentioning name, no overt act is attributed to applicant. Application is mainly pressed on parity with that co-accused Dinesh Dhawade and Chandrakant Navale and

Pappi Shirke who are released on bail by this Court and by the learned Sessions Court respectively. It is submitted that since investigation is complete and considering limited evidence available against applicant, he be released on bail by imposing suitable conditions.

3. Learned APP referred to documents filed with charge-sheet and opposed application contending that there is direct evidence establishing applicant's involvement, however, could not dispute that in FIR, no name of applicant appears or that in statement of deceased, any overt act is attributed to him.

4. In the background of above submission, it appears to be the case of prosecution, on 23rd September 2016, cousin brother of deceased lodged report alleging that on that day, he along with deceased Arjun were roaming in town in evening when one Sunil Khopade joined and while they were on the way to have tea, accused namely Sonya Dhawade, Amol Giri, Ritesh Pawar, Dinesh Dhawade, Shashikant Ghule, Atul Ghule, Chandrakant Navale and Pappi Shirke armed with dangerous weapons rushed towards them. Co-accused Sonya Dhawade and Ritesh Pawar were armed with revolver and committed assault on Arjun. Applicant's name is not mentioned in report.

5. It is found that deceased Arjun was initially admitted in hospital and was discharged and was again re-admitted for performing some operation when on 2nd December 2016, his statement is recorded. However, in that statement also, he had not attributed any overt act to applicant except for stating that he was present on the spot when deceased was assaulted by co-accused Sonya Dhawade and others.

6. Learned APP could not point out reason for not recording statement of Arjun prior to 2nd December 2016 as it is also found that after assault on 23rd September 2016, he was admitted in hospital and was discharged on 23rd October 2016 and succumbed to injuries on 6th December 2017 when offence punishable under Section 302 came to be added in this crime. Admittedly, there are no criminal antecedents of applicant. Co-accused Dinesh Dhawade and Chandrakant Navale had been granted bail by this Court who are similarly placed by its order dated 30th July 2018. While co-accused Pappi Shirke is released on bail by trial Court, whose case is similar to applicant. In that view of the matter and since it is not the case of prosecution that applicant has participated in assault, application is liable to be allowed as per order below : -

ORDER

- (i) Applicant Divakar Surendar Singh involved in C.R.No.267 of 2016 registered by Khadak Police Station, shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount;
- (ii) While on bail, applicant shall mark his presence with Khadak Police Station quarterly on first day of each such month and shall co-operate with investigation;
- (iii) Application stands disposed of in above terms.

P.N. DESHMUKH, J.