

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.116 OF 2020

Mandira
Salgaonkar

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Akash Gholap	..	Applicant
Versus		
The State of Maharashtra	..	Respondent
...		

Mr.Vikas Shivarkar for the Applicant.

Mr.S.V.Gavand, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 2nd DECEMBER, 2020

PC:-

1. The present application is filed under Section 439 of Cr.PC. seeking a regular bail by the applicant, who is arraigned as accused No.2 in C.R.No.157 of 2019 registered at Chinchwad Police Station, Pune on 5th April, 2019. The said C.R. invoke Sections 307, 506 read with 34 of the Indian Penal Code and Section 4 read with 25 of the Arms Act alongwith Section 37(1) read with 135 of the Maharashtra Police Act. The applicant was arrested on 9th April, 2019 and his application seeking bail was rejected by the learned Additional Sessions Judge, Pune on 3rd December, 2019.

2. Heard Mr.Vikas Shivarkar for the applicant and learned APP Mr.Gavand for the State.

M.M.Salgaonkar

3. The learned counsel for the applicant has vehemently argued that the applicant has been falsely implicated by the prosecution and since the investigation is complete and the charge-sheet is filed, there is no reason why he should languish in jail when “Bail is the rule and Jail is an exception”.

4. One Ganesh Narayan Londhe is the informant and while he was admitted in the hospital, he informed that on 4th April, 2019 at about 9.30 p.m., he was proceeding towards his home. At that time, one Ganesh Gholap, Akash Gholap (applicant) and Sumit Lavhe intercepted him. Ganesh shouted in an abusive language that the complainant should not be left alive. He was pulled out of his vehicle and the accused persons started assaulting him. The complainant then stated that Akash assaulted him by means of a sickle in his hand and he sustained a bleeding injury on his head. Thereafter Sumit also assaulted him in his head by a sharp weapon. He allege that he was beaten constantly and as a result, he fell to the ground. Some bystanders came to his rescue and he was taken to the hospital.

5. Perused the injury certificate of the complainant. He was examined on 25th April, 2019 at 9.30 p.m. and following injuries are noted.

“1. 6cm long CLW over Right Parietal region, bone deep underlying fracture palpable;

2. 7cm long CLW over Left Parieto temporal region bone deep;
3. 3cm long CLW over right frontal region bone deep;
4. 6cm long CLW over right occipital region bone deep;
5. 3cm long CLW over chin subcutaneous;
6. 4cm long CLW over left eyebrow subcutaneous”

6. Injury Nos.1 to 4 are on the head. The complainant came to be discharged on 9th April, 2019. On the basis of the said injuries, offence under Section 307 has been invoked against the present applicant. He is attributed the role of hitting the complainant in his head. Any act done with an intention or knowledge that if by that act, death would be caused, a person would be guilty of murder and it is made punishable under Section 307 with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or upto ten years. For the purposes of Section 307, it is not essential that the bodily injury capable of causing death should be inflicted. If the intention is to cause death and if there is a knowledge that such an act would result into death, Section 307 get attracted. In this case, the assault is in the head, a vital portion of the body, by means of a sickle, lead to *prima facie* inference that the applicant possess both-intention and knowledge. Whether it would entail punishment of imprisonment for term, which

may extend to ten years or imprisonment for life, is the matter of trial. The applicant has assaulted the complainant, which resulted into injuries on his head mentioned above. The intention and knowledge to commit the offence is *prima facie* established in the form of the material contained in the charge-sheet. The applicant do not deserve to be released on bail. It is pertinent to note that his three applications have been rejected on the ground that the applicant gave blows of deadly weapon on the head of the complainant. The two other accused in the said crime are absconding. There is every chance that the present applicant will also flee away from the course of justice once released on bail. The application is, therefore, rejected.

SMT. BHARATI DANGRE, J