

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.399 OF 2019

Nilesh Vijay Gaikwad, Age 21 years,
Occ.Self employed, R/o.Bapuji Buwa Chowk,
Behind Hotel Mauli, Warje-Ramnagar, Pune
(Presently lodged in prison)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satyavrat Joshi with Nitesh Mohite for applicant.
Mr.H.J.Dedhia, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th March 2020

PC :

1. The applicant is seeking bail in CR No.137 of 2017 registered with Haveli Police Station, Pune Rural for offences under Sections 395, 397, 363, 341, 504, 506 r/w 34 of Indian Penal Code and under Sections 3 and 25 of Arms Act. The applicant was arrested on 16th October 2017.

2. The prosecution case is that on 8th April 2017 the informant Suraj Sirsat and his friend Santosh Kamble had gone to Khadakwasala Dam Chaupati. The applicant and the co-accused Umesh Misal, Prashant Waghmare, Tushar Shinde, Akash Bhandari, Ashutosh Bhandare and others obstructed them. They used criminal force and they made complainant and Santosh Kamble to sit on their

motorcycle. Santosh was assaulted by fist blows. They took key of motorcycle. Complainant was assaulted. He was taken to hillock area. The accused inflicted reverse blow of sickle on the complainant. The co-accused Umesh threatened the complainant with revolver. Umesh questioned him who were involved in murder of his brother. They took a mobile phone and cash of Rs.2,200/- from complainant.

3. Investigation is completed and charge sheet is filed. The applicant had preferred application for bail before Sessions Court, Pune which is rejected by order dated 21st September 2018.

4. Learned advocate for applicant submitted that the applicant has no motive to assault the injured. According to the prosecution, accused no.2 was aggrieved with the complainant and he wanted to know about the murder of his brother. The applicant is in custody for more than two years. There was no intention to commit offence u/s 395 or 397 of IPC. All the other accused were granted bail.

5. Learned APP submitted that specific overt act has been attributed to the applicant. The applicant was involved in assaulting the injured. There is recovery of weapon from the applicant. The applicant was externed at the relevant time and by committing the breach of order of externment the applicant has committed this crime. There are antecedents against applicant. Three cases vide CR No.370/2013 for offence under Sections 452, 323 IPC, CR No.315/2014 for offence under Sections 143, 147, 148, 149, 328 IPC and CR No.276/2016 under Section 323 IPC are pending.

6. I have perused the charge sheet. From the tenor of FIR and other documents on record it appears that the complainant was taken to hillock area with a view to make inquiry with him regarding murder of brother of one of the accused. It is alleged that he was assaulted on the blunt side of sickle. Other accused were arrested and granted bail. I have perused the injury certificate with regards to injuries sustained by Suraj Sirsat. He received four injuries in the nature of contusion and blunt trauma. Undisputedly the victim was out of danger. Learned APP placed for perusal injury certificate as well as C.T.Scan of brain/plain study of injured. The report opines that no significant abnormality was detected and advised correlate clinically. It appears from the factual aspects of this case that the sole intention was to find out information with regards to murder of the brother of one of the accused. Subsequently statement of complainant was recorded on 20th October 2017. He stated that after assault he was dropped at Dangat Estate after informing his father. Thereafter father of complainant met him and both lodged complaint. The applicant is in custody for more than two years. Hence, bail can be granted to the applicant.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.399 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.137 of 2017 registered with Haveli Police Station, Pune Rural, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report Haveli Police Station once in a month on every first Saturday between 11 am and 1 pm;
- (iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted for some reason.

(PRAKASH D. NAIK, J.)

MST