

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

CRIMINAL BAIL APPLICATION NO. 709 OF 2019

Bharat Vishnu Hursale	...	Applicant
V/s.		
The State Of Maharashtra	...	Respondent

Mr.S.K. Gimekar for Applicant.
Mr.A.R. Kapadnis, APP for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 14th January 2020.

PC. :

1] This is a consecutive application for bail. The earlier Bail Application No.2904 of 2017 preferred by the applicant was dismissed, as withdrawn on 22nd January 2018 with liberty to file a fresh application for bail before the Trial Court, if the trial pertaining to C.R. No. 261 of 2017 registered with Ghatkopar Police Station, Mumbai, does not commence within a period of 09 months from the date of passing of the said Order.

2] The record indicates that, the applicant accordingly preferred an application below Exhibit-14 in Sessions Case No. 503 of 2017 (C.R. No. 261 of 2017 registered with Ghatkopar Police Station, Mumbai). That the said

application has been rejected by the Trial Court by its Order dated 14th January 2019.

3] At the outset, it is to be noted here that, till date, the prosecution has not taken pains to frame charge against the applicant in the said sessions trial. In view thereof, the present application is taken up for hearing by this Court.

4] Perusal of charge-sheet would reveal that, the First Information Report is lodged by Imran Nasir Shaikh i.e. brother of deceased Irfan Shaikh on 1st May 2017 alleging that, the prime accused Sachin P. Shevankar alias Bhat and applicant-Bharat V. Hursale inflicted a broken glass of bottle in the throat of Irfan and cut it. The motive as propounded by the prosecution is earlier enmity between prime accused Sachin and deceased Irfan. After completion of investigation, Police have submitted charge-sheet and it is now culminated into Sessions Case No. 503 of 2017.

5] A minute perusal of the statement of Wasim Baddrudin Shaikh, the eye-witness to the incident discloses that, on the date and time of incident, the prime accused Sachin along with the applicant came at the place of offence, when the witness and deceased Irfan were taking dinner. That, Sachin told Irfan that, there is a mistake on his part and he may be pardoned for that. Sachin thereafter bend down to touch feet of Irfan and when Irfan bend down to lift him, Sachin all of sudden inflicted a broken glass of bottle in the throat

of Irfan and cut it, which caused deep wound in the throat of Irfan. Irfan shouted loudly and ran for a little distance by holding his throat and fell down. He therefore got scared and shouted for help. At that time, brother of Irfan namely Imran came there and caught hold Sachin. At that time, one Amar Sahu told Imran to first look after Irfan, who has fell down and therefore, Imran left Sachin and thereafter, Sachin and applicant ran away. Irfan was thereafter taken to Rajawadi Hospital and while undergoing treatment, succumbed to injuries.

It thus prima-facie appears that, the applicant who was accompanying prime accused Sachin was not sharing common intention with Sachin, as the applicant was not aware of the fact that, Sachin was carrying a piece of glass with him.

6] As noted earlier, despite granting sufficient opportunity to the prosecution, the prosecution till date is unsuccessful in framing charge against the applicant.

7] The learned counsel appearing for the applicant, on instructions, submitted that, there are no antecedents at the discredit of the applicant.

8] In view of the above, this Court is of the view that the applicant can be released on bail.

9] Hence, following order.

- (i) Applicant - Bharat Vishnu Hursale in C.R. No.261 of 2017, U/Sec. 302 r/w. 34 of I.P.C. of Ghatkopar Police Station, Mumbai, be released on bail on his furnishing P.R. Bond of Rs.20,000/- with one or two solvent local sureties in like amount.
- (ii) After his release from Jail, the applicant shall mark his presence on every first Monday of the month before the Ghatkopar Police Station, Mumbai, between 10:00 am and 12:00 noon.
- (iii) Applicant shall attend all the dates before the Trial Court unless precluded on medical grounds.
- (iv) In case of two consecutive defaults in complying with condition Nos.(ii) and (iii) above, the Prosecution will be at liberty to file an application for cancellation of bail.
- (v) Applicant shall co-operate with the Trial Court in conducting trial.
- (vi) Applicant shall not tamper with the evidence and/or interfere with the process of investigation.
- (vii) Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]