

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.3184 OF 2019**

Mangesh @ Malang Vishnu Chavan .. Applicant  
Versus  
The State of Maharashtra .. Respondent

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Mr.Satyavrat Joshi for the Applicant.

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

**CORAM: BHARATI DANGRE, J.**  
**DATED : 3<sup>rd</sup> DECEMBER, 2020**

**P.C:-**

1. The applicant, aged 23 years, seek his release on bail in Sessions Case No.445 of 2016, being charge-sheeted for the offences punishable under Sections 302, 506(2) read with Section 34 of the Indian Penal Code and Sections 37(1), 135 of the Maharashtra Police Act, in C.R.No.40 of 2016 registered with Samarth Police Station, Pune.

2. The applicant came to be arrested on 30<sup>th</sup> March, 2016 and since then he is behind the bar. The sessions trial has commenced and has reached the stage of cross-examination. The bail application of the applicant came to be rejected on 13<sup>th</sup> March, 2019 by the learned Additional Sessions Judge, Pune, on account of the conduct of the applicant, by recording a

finding that the accused avoided the cross-examination and this conduct disentitle him from being released on bail by taking into account the seriousness of the offence and severity of the penalty imposed.

3. The learned counsel, Mr.Satyavrat Joshi, has taken me through the charge-sheet and he submit that there is no material warranting his incarceration so long as even assuming for a minute that the prosecution case is proved as contained in the charge-sheet, the role attributed to him is only assisting the accused persons to flee away from the spot where they assaulted deceased Ganesh and the applicant was waiting at the entrance of the Lodge where the incident took place and the accused persons by pillion riding his motorcycle has fled away from the spot. The learned counsel submit that he is not charged of any assault nor it is the case of the prosecution that he participated in the assault by using any weapon. The learned counsel also submit that the co-accused-Ganesh Salunkhe is already released on bail by this Court and the applicant is entitled for a similar treatment.

4. The FIR came to be lodged by one Amarchand, who allege that on 26<sup>th</sup> March, 2016, a brawl had taken place between two of his acquaintances being Ganesh Kamble and Somesh Anar at the time of Shivjayanti celebration at Amol Lodge, Somvar Peth, Pune. At that time, Somesh had hit

Ganesh in his head and this was informed to the complainant by Ganesh on 27<sup>th</sup> March, 2016. When the complainant expressed his concern, Ganesh is said to have stated that he will deal with Somesh Anar.

The complainant then referred to an incident dated 28<sup>th</sup> March, 2016, which was a second day of Holi and he state that after playing colours, when some of the friends had gathered at Amol Lodge, Ganesh Kamble, Omkar Kamble alongwith others were sipping beer. The complainant also participated in the Holi celebration, drank beer and after some time, stepped down the Lodge for playing Holi. At that time, Ganesh Kamble and Ganesh Kamathi came to the spot and informed that some fight had ensued in Parge Chowk and, therefore, they approached the said spot where Ganesh Kamathi and other boys were fighting. The quarrel being of trivial nature, was put to an end and after that, as per the say of Ganesh Kamble, the applicant rode him alongwith Rahul Velekar at Amol Lodge for continuing the feast. At that time, Ganesh Kamble used the complainant's phone and he called Rajesh and 2-3 other persons and he verbally abused Rajesh on telephone. The complainant told Ganesh that Rajesh is his friend and asked him why he is abusing Rajesh, but Ganesh did not respond. At around 3.45 to 4.00 p.m., Somesh arrived at the Lodge with his friend Ganesh Salunkhe and he was armed with one long sharp weapon and he questioned Ganesh Kamble as to why he has called up his brother Rajesh. Somesh assaulted Ganesh in his head, then on

neck and right hand. The complainant took rescue in a nearby washroom and watched the incident from there. At that time, Somesh also hit the complainant with a beer bottle by saying that Ganesh had used his phone for calling his brother. Ganesh was found lying on the ground in an injured condition and at that time, Somesh and his accomplice Ganesh Salunkhe alongwith the weapons left the Lodge.

5. The above incident resulted into the registration of FIR. The injured Ganesh succumbed to the injuries on 28<sup>th</sup> March, 2016 itself and the cause of death was opined to be “Due to multiple chop injuries with stab injury over neck”. The postmortem report, in column No.17, refer to as many as 28 injuries. Most of them being chop injuries and some being incise one. The complainant-Amarchand was also referred to an Orthopedic Doctor. Somesh and Ganesh Salunkhe were named as the accused in the FIR.

6. The investigating machinery proceeded to investigate the incident, conducted spot panchanama and arrested the two accused persons. The statement of the witnesses were recorded, which include the statement of one Kiran Dhende, who was a participant in the celebration of Holi. He state that at 3.30 p.m., he was waiting for his friends at Ashwini Mitra Mandal square. At that time, he noticed that one Ganesh Salunkhe, Mangesh Chavan (applicant) and one other boy with long hair, came riding on the motorcycle and the other two

pillion riders got down from the motorcycle, but Mangesh continued to sit on the motorcycle. Some discussion took place between them and the witness state that the boy with long hair was carrying sharp weapon. He saw the two persons entering in Amol Lodge and he suspected that some untoward incident is likely to happen. After 20 to 25 minutes, Ganesh Salunkhe and other person accompanying him, came running out of the Lodge and it is at that time, Mangesh i.e. the present applicant started his motorbike. The other two sat on the motorbike and they left towards 15<sup>th</sup> August square. Kiran has stated that he had seen the boys at a close distance and Ganesh Salunkhe and Mangesh Chavan are known to him. On the basis of the said statement, the applicant was also indicted in the said crime and came to be arrested.

7. The charge-sheet contain statement of several witnesses, but as far as the present applicant is concerned, he is charge-sheeted for his involvement to the aforesaid extent of assisting the accused persons to flee away from the spot. The applicant is alleged to have being waiting outside the Lodge and as soon as Ganesh and Somesh came out of the Lodge after assaulting the complainant and deceased Ganesh, he started the motorbike and rode away the two accused persons from the Lodge. This is the precise charge against the applicant.

8. On 16<sup>th</sup> January, 2018, the bail application of Ganesh Ramchandra Salunkhe, the co-accused, was heard by noting

that no specific overt act is attributed to him except that he accompanied Somesh to the spot and fled away from the spot alongwith Somesh. This Court (Smt.Sadhana S. Jadhav, J) was pleased to release him on bail. Somesh was denied parity with the said applicant as he was the key assailant.

9. The learned APP has vehemently argued that the learned Additional Sessions Judge, Pune has denied the bail to the applicant on the ground of his conduct. I do not think that the applicant deserve denial of his liberty only because the counsel for the accused avoided the cross-examination and in person, he declined to cross-examine and an order of cross-examination was required to be passed. In any case, this has happened in the month of March, 2019 and it is almost 18 months when the said order was passed. When specifically asked to the learned APP, whether there is any further progress in the trial, the response of the learned APP is in negative. It is to be noted that in the wake of pandemic, the trials are likely to be delayed, particularly when from the month of March till the reopening of the Court in terms of the SOP issued by the High Court with effect from 22<sup>nd</sup> of November, the trial courts did not proceed with the evidence. The trial in the present case, though at the fag end, is also likely to be delayed. The applicant is incarcerated since 2016 i.e. for a period of four years. Taking into consideration the role attributed to him in the charge-sheet, subject to the stipulation that the applicant will not flee

away from the course of justice, by imposing strict conditions, the applicant deserve to be released on bail.

10. The observations made above, are *prima facie* in nature and based on the material placed before me in the form of charge-sheet. The trial has commenced and it is expected that it should be completed with utmost priority by keeping in mind the SOP, which the Sessions Court is duty bound to abide by.

**: ORDER :**

- (a) Application is allowed.
  - (b) Applicant -Mangesh @ Malang Vishnu Chavan shall be released on bail in connection with C.R.No.40 of 2016 registered with Samarth Police Station, Pune, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
  - (c) Applicant shall mark his presence, once in every month, before the Trial Court and shall attend the trial on each and every date and will not cause any delay in conclusion of the trial.
11. Criminal Bail Application No.3184 of 2019 stands disposed of in the aforestated terms.

**SMT. BHARATI DANGRE, J**