

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

CRIMINAL BAIL APPLICATION NO. 3189 of 2019

Shubham Balasaheb Takale ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Harshad A. Sathe and Saurabh Butala for the Applicant.

H. J. Dedhia, APP for the State/Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st JANUARY, 2020.

P.C. :

This is an application for bail in CR. No. 219/2018 registered with Wakad Police Station, Pune for the offences under Sections 302, 307, 323, 506, 141, 147, 148, 149, of the Indian Penal Code. The Applicant was arrested on 9th March, 2018.

2. The First Information Report (for short 'FIR') was lodged on 9th March, 2018. It is alleged in the FIR that on 8th March, 2018 at about 10.15 p.m. the Complainant and his friend Raju Khan were talking to each other. At that time Rupesh Sorati who was the friend of the Complainant, reached there on scooter and told Complainant to drop him at Malashri Hotel, Saudagar, Pune. Thereafter all of them proceeded on scooter. At about 10.30. p.m. when they reached near Shani Temple, Thergaon, Pune four

persons came on motor cycle. Amongst them Sonya @ Rohit Daware obstructed the Complainant and stopped them. Sonya @ Rohit told Rupesh to get down from the vehicle. He abused him. Sonya and Ishwar Londhe assaulted him by sickle and Shubham Takale (Applicant) assaulted him by chopper. Yogesh and 4-5 other persons assaulted the Complainant and Raju Khan by fist blows and stone. The Complainant and Raju Khan hid behind nearby bus and saw that Sonya Daware and Ishwar Londhe were assaulting Rupesh by sickle and the Applicant had assaulted Rupesh by chopper on his head and legs. Yogesh @ Dada and other 4-5 persons assaulted Rupesh by cement block on his head. The Accused then ran away from the place of incident. During the course of investigation statements of several persons were recorded. On completing investigation charge-sheet is filed.

3. Learned Counsel for the Applicant submitted that the Applicant has been falsely implicated in this case. There is no evidence on record against the Applicant. The statement of the eye witnesses cannot be believed. It is submitted that the eye witnesses Rajesh Sayalu and Raju Khan excluded the Applicant in the statement under Section 164 of the Criminal Procedure Code (for short 'Cr.P.C.'). It is submitted that the statement of the

witness Rasal Gaud, Anil Panchal were also recorded under Section 164 of the Cr.P.C. They have not referred to the involvement of the Applicant in the crime. Importance will have to be given to the statements of the witnesses under Section 164 of the Cr.P.C. which do not involve the Applicant as one of the assailant. It is also pointed out that in the statement under Section 164 of the Cr.P.C., the witnesses stated that the chopper was found below the dead body and the alleged recovery is false.

4. Learned APP submitted that Rajesh Sayalu (Complainant) and Raju Khan are the eye witnesses to the incident and they have named the Applicant as assailant. The contradiction in the statement of the said witnesses and the version of the witnesses will have to be adjudicated at the time of trial. There is recovery of chopper from the Applicant. The victim had sustained several injuries.

5. I have perused the documents on record. The FIR was lodged by Rajesh Sayalu on 09th March, 2018. He has categorically stated that the Applicant and the co-accused assaulted the deceased Rupesh. The Applicant was armed with chopper. The statement of Raju Khan who is another eye witness also refers to the assault by the Applicant. Both witnesses stated that the victim

was assaulted by chopper with repeated blows. The postmortem report indicates that the victim had sustained at about 27 injuries. Specific role has been assigned to the Applicant. The FIR and the statement of Raju Khan was recorded immediately after the incident. There is recovery of weapon from the Applicant. It is pertinent to note that the statements of the aforesaid eye witnesses and the other witnesses were recorded under Section 164 of the Criminal Procedure Code on 4th May, 2018. Their version is identical. They have contradicted themselves with earlier version. The offence is of serious nature. The evidentiary value of such statement will have to be considered at the time of trial. Hence, no case of grant for bail is made out.

6. Hence, I pass the following order:

ORDER

Bail Application No. 3189 of 2019 stands rejected.

(PRAKASH D. NAIK, J.)