

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

CRIMINAL BAIL APPLICATION NO. 3251 OF 2019

Manohar @ Manya Uttam Shinde	...	Applicant
V/s.		
The State of Maharashtra & Anr.	...	Respondents

Ms.Neha Patil i/b. Mr.Ganesh Chavan for Applicant.
Mr.A.R. Kapadnis, APP for State.

CORAM : A.S. GADKARI, J.

DATE : 18th February 2020.

PC. :

1] This is a consecutive application under Section 439 of the Code of Criminal Procedure for bail in C.R. No. 211 of 2017 registered with Samta Nagar Police Station under Section 307, 506(2), 504, 34 of Indian Penal Code and under Section 37(1) and 135 of the Maharashtra Police Act.

2] Heard Ms.Patil, learned counsel for the applicant and Mr.Kapadnis, learned APP for the respondent-State. Perused the charge-sheet.

3] The First Information Report is lodged by Mr.Sumit Arup Das.

The prosecution case in brief is that, the applicant along with his friends were consuming liquor in open space near the house of Mr.Bharat

Bhariya. The said Mr.Bharat Bhariya and his son Shailesh Bhariya took objection for the same, upon which the applicant along with co-accused Rahul @ Mulla Singh started assaulting them. The injured in the present crime i.e. Mr.Vaibhav Gawde along with his friend Mr.Sumit Das (informant) tried to intervene in the matter. They were successful in separating the said scuffle. At that time, the applicant threatened Vaibhav Gawde and Sumit Das that, they will face serious consequences for their invention in their personal matter. At about 08.30 pm on the same day i.e. on 13th May 2017, the applicant along with his friend Rahul Chavan came at the scene of offence. Rahul Chavan caught hold Vaibhav Gawde from backside and the applicant inflicted a blow of a sharp edged weapon on the neck of Vaibhav Gawde. The applicant also inflicted two other blows on the body of Vaibhav Gawde. When Sumit Das tried to save Vaibhav Gawde, he was also assaulted by the applicant. Vaibhav Gawde was subsequently admitted to the hospital, after undergoing medical treatment was discharged after 10 days. During the course of investigation, the applicant came to be arrested on 14th May 2017. After completion of investigation, police have submitted charge-sheet.

4] Learned counsel for the applicant submitted that, in the history given to the Medical Officer by Vaibhav Gawde (injured witness) he has stated that, he has assaulted on 13th May 2017 at about 7.30 pm at Santacruz in a scuffle. That the present incident has taken place at Samta Nagar Kandivali.

There is vast distance between the said two places and therefore, the version of the first informant may not be believed. She submitted that, the said Vaibhav has now fully recovered. The applicant is in jail for last more than two and half years and therefore, he is entitled to be released on bail. In support of her contention, she relied upon two decision, namely, (1) Ramesh Iranna Bali Vs. State of Maharashtra, reported in AIR Online 2018 SC 639 and (2) Laxman Khamgal Vs. State of Maharashtra in Bail Application No. 1489 of 2018, dated 9th August 2018. She further submitted that, if the applicant is released on bail, he will abide with all the conditions as this Court may impose upon him. She therefore prayed that, the applicant may be released on bail.

5] Per contra, Mr.Kapadnis, learned A.P.P. vehemently opposed the application and submitted that, the applicant is a habitual offender. That for a trifle reason, the applicant assaulted Vaibhav Gawde with a sharp edged weapon on his neck. He submitted that, the said weapon has been recovered from the applicant by effecting panchanama under Section 27 of the Indian Evidence Act. He therefore prayed that, the present application may be rejected.

6] The facts giving rise for lodgment of the present crime and as have been enumerated by first informant Sumit Das are briefly stated hereinabove and the repetition of the same is hereby avoided. The Injury Certificate issued in favour of the Vaibhav by Brihan Mumbai Mahanagar Palika Hospital,

Boriwali (W.), Mumbai, duly corroborates the version of first informant Sumit Das. The first informant Sumit Das has also sustained one CLW ad-measuring 10 x 2 x 1 cm on his right side root of neck. The weapon of assault used by applicant has been recovered from him. There are four eye witnesses to the present crime.

The applicant is also involved in four other crimes within the jurisdiction of Samta Nagar Plice Station, namely, (i) C.R. No. 248 of 2013 u/Section 457, 380 IPC (ii) C.R.No. 75 of 2015 u/Sec. 353, 332, 323, 504 IPC (iii) C.R.No. 495 of 2016 u/Sec. 324, 323, 384, 506(2), 34 IPC. The record indicates that, when the applicant was on bail in the earlier crime, has committed the present crime.

7] In view of the above and after taking into consideration the inclination of the applicant towards criminality being habitual offender and the gravity of the present crime, this Court is of the considered view that, the applicant does not deserve to be released on bail.

8] Application is accordingly rejected.

[A.S. GADKARI, J.]