

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

**BAIL APPLICATION NO. 1102 OF 2021**

Santosh @ Michael Ramesh Dhawale ....Applicant

Versus

The State of Maharashtra ....Respondents

**WITH  
INTERIM APPLICATION NO. 1792 OF 2021  
IN  
BAIL APPLICATION NO. 1102 OF 2021**

Sandip Pandit Gaikwad ....Applicant

Versus

The State of Maharashtra ....Respondent

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Mr. Monish Bhatia for the Applicant.  
Mr. Ateet Shirodkar for the Applicant/Intervener in IA/1792/2021.  
Mr. Ajay Patil, APP for the Respondent-State

**CORAM : SANDEEP K. SHINDE, J.**

**DATE : 17<sup>th</sup> SEPTEMBER 2021**

**P. C. :**

1. Heard.
2. The Applicant seeks enlargement on bail in connection with the C. R. No. I- 266 of 2020 registered with Vitthalwadi Police Station, Ulhasnagar, for the offences punishable under Sections 307, 120B r/w 34 of the Indian Penal Code, under Sections 3,25 (1-b) (a), 27(2) of the Arms Act and Section 37(1)135 of the Maharashtra Police Act.
3. Prosecution case in brief, is that the Complainant Gaikwad was

attacked by two unknown persons with the iron rod and firearm, who fled the scene of offence, the moment they saw the police van approached into the place of incident. The Complainant was admitted at Shraddha Hospital. Injury certificate shows that he had suffered two gun injuries on the right leg; out of which one was exist gun short wound. The third injury was CLW on the right frontal parietal. Soon after the incident on 22<sup>nd</sup> October 2020, the subject crime came to be registered against two unknown persons. On 25<sup>th</sup> October 2020 supplementary statement of the Complainant was recorded in hospital, when he was conscious. Before I proceed to deal with the supplementary statement recorded three days after the incident, it may be stated that on the date of the incident and thereafter he was conscious throughout. Be that as it may on 25<sup>th</sup> October 2020, the Complainant disclosed that when he lodged the First Information Report, he could not narrate the correct facts may be for the reason, he was under tremendous pressure. Therefore, in the supplementary statement he disclosed that on 22<sup>nd</sup> October 2020 attack was mounted on him not with rod but by Koyata by three assailants and not two. For the first time, after three days of the incident, he disclosed the name of the Applicant. Thereafter, second supplementary statement was recorded on 30<sup>th</sup> October, 2020. In this statement, he disclosed that one of the assailants was Hiten Thakur (Accused No. 1) an associates of the Applicant. Complainant's this statement is descriptive. The Complainant would say, that in August 2020, he was doing gambling business and had permitted the Applicant to join the business in the same area. Later he prevented the Applicant to carry on gambling business at a particular place. Therefore, there was resent and bitterness between them. Thus alleged, the Applicant managed to attack

him with the help of his three associates / employees.

4. Prosecution would rely on the statement of one Dipak and Vicky. They were owners of the car and sold it to the Applicant for consideration. This car was allegedly used in commission of the offence. The prosecution would also rely on the statement of landlord of the place, where the Applicant wanted to start the gambling business. Therefore, it is prosecution case that the Applicant had conspired with co-accused, eventually his business associates to eliminate the Complainant and accordingly executed the conspiracy. The submission is that, in view of the nature of the offence, the Applicant may not be granted bail.

5. I have perused the final report; and in particular the complaint and two supplementary statements as stated above. That is since after the incident the Complainant was conscious throughout and therefore it was not conceivable to assume that the Complainant could not identify and disclose the name of Hiten Thakur, who allegedly assaulted him with firearm. The accused, Hiten Thakur, who allegedly assaulted Complainant with firearm, was of his acquaintance, being associate of the Applicant. Interestingly the name of Hiten Thakur being associate of the Applicant was disclosed a test after the incident to connect him with the Applicant. In fact, Accused No. 1 Hiten Thakur was arrested on 23<sup>rd</sup> October 2020. In fact the complicity of the Applicant in the subject crime being conspirator this uncertain and renders the case of prosecution indefinite.

6. Be that as it may except the accusations made by the Complainant in

his supplementary statement recorded three days after the incident. There is no other material to connect the Applicant to the alleged conspiracy. In view of this fact, the continuation of custody of the Applicant is not essential. Even otherwise investigation and trial may not commence in the near future. Antecedents of the Applicant pointed out by the prosecution, relates to the offences under the Gambling Act. In consideration of the facts stated above, in my view, the case is made out for granting bail to the Applicant. Thus the following order:

**ORDER**

- (a) The Applicant is arrested in Crime No. I-266 of 2020 registered with Vitthalwadi Police Station, Ulhasnagar, shall be released on bail on furnishing P.R bond in the sum of Rs.50,000/- with one or more sureties in the like sum;
- (b) The Applicant shall report to the Investigating Officer of the concerned Police Station twice in the month i.e. first and last Monday of each month between 11:00 a.m. to 01:00 p.m. till further orders and co-operate in the investigation.
- (c) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (d) The Applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

7. The application is accordingly allowed and disposed of. Interim Application is also disposed of.

8. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

**[SANDEEP K. SHINDE, J.]**