

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

BAIL APPLICATION NO. 1606 OF 2021

Sunil Devram Sonawane ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Misbah Solkar a/w Mr. Pratik Karande i/by Mr. Amin Solkar,
Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd JULY, 2021.

PER COURT:

1. The applicant was arrested on 13th July, 2019 in C.R. No. I-194 of 2019 registered with Ulhasnagar Police Station, Dist. Thane for offence under Section 307 of Indian Penal Code.

2. The prosecution case in brief is that on 17th May, 2019 at about 8.30 p.m. when the complainant was accompanying his friend Bhima Diware to his house, they saw that some persons were quarreling and fighting with Aakash Sonawane. The complainant tried to intervene. Kishor Chor assaulted him with fist/kick blows and knife on his back. The complainant fled from the spot and went to beat chowki. The First Information Report (for short “FIR”) was registered. The complainant in his complaint dated 17th May, 2019

had attributed overt act to Kishor Chor and lodged complaint against him.

3. The applicant was arrested. Knife was recovered from the applicant on 19th May, 2019. Statement of other witnesses were recorded. Supplementary statement of the complainant was recorded. On completing investigation, charge-sheet was filed.

4. The applicant preferred an application for bail before the Sessions Court. The said application was rejected by order dated 30th June, 2020.

5. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant was granted temporary bail by the Sessions Court on the basis of High Power Committee Guidelines by order dated 9th December, 2020 for a period of 45 days. On expiry of the period of bail, the applicant has surrendered to jail. The FIR was against Kishor Chor. The applicant was not named in the FIR. Supplementary statement of the complainant was recorded. In which he has exonerated Kishor Chor. In the statement under Section 164 of Cr.P.C., the complainant has not implicated the applicant. In the affidavit filed by the complainant he has exonerated Kishor Chor. Even the applicant is not named as assailant in the affidavit. The statement of the other witnesses, who

has implicated applicant cannot be considered to further detain the applicant in custody.

6. Learned APP submitted that the involvement of the applicant was disclosed in the supplementary statement of the complainant. There are two witnesses to the incident, who has attributed specific overt act of assault by applicant to complainant. Weapon is recovered from him. Injury certificate corroborates prosecution case. Prima facie there is evidence to show his involvement in the crime.

7. The applicant is in custody from 13th July, 2019. He is in jail for substantial period of about two years. The FIR do not implicate the applicant as participant in the crime. Role of assault by knife is attributed to Kishor Chor. Supplementary statement of the complainant was recorded on 9th June, 2019. In the said statement the complainant has stated that he sustained injury due to piece of glass. Kishor Chor was standing behind him and he felt that he has assaulted him and lodged complaint against him. While taking treatment after having discussion with his friends he was informed that Kishor did not assault him and due to misunderstanding he lodged the complaint against him. Statement of the complainant was recorded under Section 164 of Cr.PC on 11th June, 2019. The

complainant stated that he fell down and sustained injury due to piece of glass. He was not assaulted by Kishor. Thus in the FIR, supplementary statement, as well as statement under Section 164 of Cr.P.C., the complainant has not attributed any role to the applicant. He has implicated Kishor Chor and exonerated him. The complainant also filed an affidavit which exonerates Kishor Chor was named in the FIR as assailant. Applicant has not been implicated. However, statement of witness Geeta Mohite mentioned that the applicant had assaulted the complainant with knife. Statement of Gajanan Nibore stated that the applicant has assaulted complainant with knife. The injured had sustained CLW over back at left renal angle. Considering the statements of injured as stated above, the applicant is entitled for bail.

8. Hence, I pass the following order :-

ORDER

- (i) Criminal Bail Application No. 1606 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. I-194 of 2019 registered with Ulhasnagar Police Station, Dist. Thane, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once

in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. for a period of six months and thereafter, once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m till further order;

(iv) The applicant shall not tamper with the evidence.

(v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of four weeks in lieu of surety.

(vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)