

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

BAIL APPLICATION NO.1452 OF 2020

Kaushal Hira Zha

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

Mr.Varun M. Pandey i/b. Mr. Sunny A. Waskar, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 3, 2021.

P.C. :

This is an application for bail in connection with C.R.No.I-46 of 2018, registered with Ulhasnagar police station, District-Thane, for the offences punishable under Sections 307, 326, 324, 427, 143, 147, 148, 149, 452 and 506 of Indian Penal Code (“IPC”, for short) and Sections 4 and 25 of the Arms Act.

2 The First Information Report (“FIR”, for short) was lodged by Omkar Surve on 3rd March, 2018. It is alleged that the complainant was working with one Sachin Tiwari,

Builder/Construction Contractor and carrying out business in the name and style as 'M/s. Shivansh Vaishnawi Developers'. On 3rd March, 2018, it being Holi Festival, the friends of Mr. Tiwari had visited his office to exchange the greetings. At about 6:15 p.m., the first informant and Mr. Sachin Tiwari were conversing with Mr. Nitin Singh, Mr. Suresh Jaiswal and Mr. Chetan Patil. It is alleged that the applicant and others armed with weapons, entered in the office of Mr. Tiwari. They abused and assaulted Mr. Tiwari and Mr. Nitin Singh with the said weapons. Two other persons, namely Suresh Jaiswal and Chetan Patil managed to lock themselves in the adjacent room. One unknown person assaulted Nitin Singh with iron rod on his leg and one Kaushal Jha assaulted Sachin Tiwari on torso with sickle. Rajesh Singh assaulted Sachin Tiwari with sword on his head. Roshan Jha tried to assault first informant with chopper on his stomach. The first informant put his hands in between and sustained injury on his left hand and fractured his right hand. The attack was initiated to kill Sachin Tiwari with deadly weapons. The applicant was arrested on 21st April, 2018, and since then he is in custody. On completing investigation, charge-sheet was filed.

3 The applicant had preferred the application for bail

before this Court, which has been rejected vide order dated 30th January, 2019. This is a second application for bail before this Court.

4 Learned advocate for the applicant submitted that the applicant is in custody since last about 3 years. There is no progress in the trial. The co-accused Roshan Hiranand Jha has been granted bail by the Sessions Court recently vide order dated 15th July, 2021, and, hence, the applicant is entitled for bail on the ground of parity.

5 Learned APP submitted that previous application preferred by the applicant was rejected. Specific role has been attributed to the applicant. There are eye witnesses to the incident. There is recovery of weapons from the applicant. There were criminal antecedents against the applicant. About 10 cases were registered against the applicant in the past. Hence, the application may be rejected.

6 FIR was registered on 3rd May, 2018. It is the case of the prosecution that the accused were armed with weapons. They assaulted the complainant and another person. The applicant had

assaulted Sachin Tiwari with sickle. Rajesh Singh assaulted Sachin Tiwari with sword on his head. Roshan Zha was tried to assault the first respondent with chopper. The applicant was arrested on 21st April, 2018.

7 Accused Rahul Jadhav was granted bail by the Sessions Court vide order dated 25th June, 2018. Ravi Sharma was granted bail by the Sessions Court by order dated 25th June, 2018. Pavan Sonawane was granted bail by order dated 25th June, 2018. Vicky Kamble was granted bail vide order dated 25th June, 2018. Prem Khairnar, Vishnu Lahane, Prabhuraj @ Babu Patil were also granted bail by the Sessions Court. The application for bail preferred by the applicant was rejected by order dated 30th January, 2019. Roshan Jha who had also participated in the crime was recently granted bail by the Sessions Court by order dated 15th July, 2021. While granting bail, it was observed that on perusal of medical certificate, it reveals that the informant has sustained all simple injuries. Medical certificate does not find fracture injury to the finger of the informant. In the statement recorded under Section 164 of Cr.P.C., it is stated by informant that co-accused Kaushal Jha assaulted by chopper over his thigh and caused grievous injury. However, informant had sustained

only simple injuries. The co-accused having identical role granted bail by the Sessions Court and the High Court. Rajesh Singh was granted bail by this Court vide order dated 7th September, 2018. Learned APP has relied upon the antecedents of the applicant. The case of the applicant was registered in the year 2014-15, 2015-16 and 2017-18. The applicant is on bail in all these cases. In the present case, he is in custody for a period of three years. Except the applicant all the other accused are apparently on bail. Considering this aspects, bail can be granted on certain conditions.

:: O R D E R ::

- (i) Bail Application No. 1452 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.I-46 of 2018, registered with Ulhasnagar police station, District-Thane, on executing P.R. Bond in the sum of Rs.50,000/- with one or more local sureties in the like amount;
- (iii) Applicant shall not tamper with the prosecution evidence in any manner;

- (iv) Applicant shall report concerned Police Station, once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (v) Bail Application 1452 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)