

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

BAIL APPLICATION (STAMP) NO.6805 OF 2020

Jaen Navshya Mhaskar

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Shashikant P. Chaudhari, Mr.P. P. Pawar and Ms.Kishori V. Tribhuvan i/b. M/s. Maharashtra Law Associates, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 11, 2021.

P.C. :

This is an application for bail under Section 439 of Cr.P.C. in connection with C.R.No.I-19 of 2020, registered with Bhiwandi Taluka Police Station, District-Thane, for the offences punishable under Sections 302, 324, 141, 143, 144, 147, 148 and 149 of Indian Penal Code (“IPC”, for short). The applicant was arrested on 2nd March, 2020.

2 First Information Report (“FIR”, for short) was lodged on 31st January, 2020, by Anjum Nafis Qureshi. The complainant was informed that her husband Nafis was injured and admitted to

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hospital. She went to hospital. Nafis had sustained injuries. He was not in a position to speech. It was alleged that some boys present in the hospital told that 7 to 8 unknown persons assaulted the victim by wooden log. FIR was lodged against unknown person. During the course of investigation, it was revealed that the deceased, injured Akib and Amir were involved in theft of bullocks. The villagers learning about the fact that the victim and others are likely to commit theft of bullock had chased them and assaulted. Applicant and other accused were arrested.

3 Co-accused Kalpesh Patil and Nagesh Patil were granted bail by the Sessions Court. The application preferred by the applicant was however rejected by the Sessions Court.

4 Applicant had preferred an application before this Court which was disposed of vide order dated 16th September, 2020. From the tenor of the order, it is apparent that the application was not adjudicated on merit. It was contended by the applicant that the co-accused were granted bail and liberty was sought to prefer application before the Sessions Court. The application was disposed of with liberty, as prayed for. The order

also makes it clear that this Court has not expressed any opinion either on parity or otherwise.

5 Learned counsel for the applicant submits that there is no evidence against the applicant. No specific role has been attributed to the applicant. Except the statement of Ganpat Kalya Kondhari dated 5th February, 2020, there is no evidence against the applicant. The said witness has not attributed any specific overt-act to the applicant. Statements of other witnesses indicate that they have referred to unknown persons having assaulted victim and injured. However, no test identification parade was conducted. There are no criminal antecedents against the applicant. There is no recovery from the applicant.

6 Learned APP submitted that the applicant has been named by Ganpat Kalya Kondhari. He has been attributed role of one of the persons amongst others causing damage to the vehicle, and participating in crime. It is submitted that several persons were involved in assaulting the deceased and other injured persons.

7 On perusal of statements, it appears that no specific

overt-act has been attributed to the applicant. Statement of Ganpat Kalya Kondhari does not indicate that he is eye witness to the incident of assault on the deceased. In his statement dated 5th February, 2020, he has stated that on 30th January, 2020, he heard people shouting that bullock thief have come and parked tempo for carrying bullock. Several people had gathered. He named applicant, Kalpesh Patil and Vishnu Valvi as present at Bhiwandi-Parol road. One bullock was tied to pick up. He gave information to police. One person was near vehicle. He was assaulted by fist/kick blows. The villagers and accused ran into forest to chase thief. One Michael Jadhav told him that, villagers are assaulting one unknown person by wooden log and fist/kick blows. Police Patil Kalya Pardhi came there. One injured person sustained head injury and other person was also assaulted. The first injured gave his name as Akib Ansari, the other injured was Amir Khan and injured who sustained head injury was Nafis Qureshi. He was taken to hospital. Nafis succmed to injuries. Thus, Ganpat Kondhari was not eye witness to assault on Amir and Nafis. Ganpat Kondhari has not attributed any specific overt-act to applicant when he saw him amongst villagers near the pick up. His statement was recorded on 5th February, 2020. Statement of Michael was recorded on 5th February, 2020. He stated that on

31st January, 2020 at 12:30 hrs., he saw Kalpesh Patil and others with wooden log causing damage to vehicle. One person was made to sit on ground. He saw some persons assaulting unknown person. He also saw another injured. The names of injured were Akib, Amir and Nafis. He has not named applicant as assailant. Statement of Vasant Pardhi do not refer to applicant. Amir Khan and Akib (injured) has not named assailants. He has not attributed any specific overt-act to the applicant although there are statements on record, which indicate that unknown persons were involved in chasing the deceased and the injured person. The test identification parade memo is not on record. On perusal of the order passed by the Sessions Court granting bail to the co-accused and rejecting the application for bail preferred by the applicant, it is apparent that there is no reference to such parade being conducted. There is nothing on record to show that identification parade was conducted. I have perused the statement of Dhaval and Tejas Salvi. These witnesses has not named the applicant as one of the person involved in the incident. However, they have referred the unknown person involved in the crime. Their statements are not fortified by identification parade. Even if statement of witnesses are accepted, there is no specific overt-act to any person. Case for grant of bail is made out.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application (Stamp) No.6805 of 2020, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-19 of 2020, registered with Bhiwandi Taluka Police Station, District-Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report Bhiwandi police station, District-Thane once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Bail Application (Stamp) No.6805 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)