

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.2961 Of 2021**

**NIKHIL BALASAHEB GOLE**

**)...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Mr.Karl Rustom Khan i/b. Mr.Tejas Hilage, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

**CORAM : V. G. BISHT, J.**

**RESERVED ON : 22<sup>nd</sup> NOVEMBER 2021  
PRONOUNCED ON : 4<sup>th</sup> DECEMBER 2021**

**P.C. :**

1           The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.344 of 2019 registered with Police Station Kothrud, Pune, for offences punishable under Section 324, 323, 504 read with 34 of the Indian Penal Code (IPC) and under Section 4(25) of the Arms Act.

AVK

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2           It is the case of prosecution that on 12<sup>th</sup> October 2019, at about 11.30 p.m., when the informant was in his house, somebody from outside asked “काकु राहुल् आहे का ?”. The mother of the informant opened the door and saw some boys standing outside the house. Sensing something wrong, she replied falsely that Rahul is not in the house. The prosecution alleges that accused Vikas Prakash Modve then threw a dustbin at the mother of the informant which hit on her mouth and she raised commotion and hearing this the informant came out of the house. The prosecution further alleges that as soon as the informant came out of the house, accused Vikas Prakash Modve started beating him by means of fist and kick blows. Another accused Nikhil Balasaheb Gole (present applicant) hit on the head of informant by means of a piece of tile and caused injuries. The informant, accordingly, lodged the report.

3           Mr.Karl Rustom Khan, learned counsel for the applicant, submits that accused Vikas Prashant Modve is already released on bail by the learned trial Court. The learned trial

Court rejected the application of the applicant only on the ground of antecedents. Investigation is over and therefore, there is no necessity of keeping the applicant in the custody.

4           Smt. Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that there is eye witness to the incident and invited my attention to the statement of Leela Suresh Kandhare. According to the learned APP, there is no merit in the application and the same is liable to be rejected.

5           Perused the investigation papers. First Information Report (FIR) clearly shows that the informant was assaulted by the applicant on his head by means of a tile. There is injury certificate issued by Sassoon Hospital, Pune. It shows that there were following three injuries :

- (i) CLW on parietal region 0.4 x 0.5 x 0.5 cm red
- (ii) CLW on occipital region 0.2 x 0.5 x 0.5 cm red
- (iii) abrasion on parietal and Right side of occipital region  
0.3 x 0.5 cm red

However, the above noted injuries were found to be simple, caused by means of hard and blunt object.

6           As far as recorded statement of eye witness, namely, Leela Suresh Kandhare is concerned, it appears that after hearing the commotion, when this witness reached on the spot, she saw three to four boys running away in a lane and when she asked the mother of informant as to what had happened, the mother of informant informed that four boys had come and out of them son of Mrs.Modve, who was carrying sickle in his hand, raised sickle to assault her but since she fell down, the sickle flew in air and fell down whereas the other accused gave a blow on the head of the informant by means of a piece of tile. It is at that point of time, a boy again came and started abusing when all the women caught hold of him and then the informant's mother told that it is he i.e. applicant, who had assaulted her son by means of a piece of tile.

7           It is quite clear from the statement that this witness had not seen the applicant assaulting the informant by means of piece of tile and rather, she was told by the mother of the informant. All that she witnessed was the running away of the four boys in a lane and then catching hold of the applicant on the spot when he returned back.

8           In view of the above and having regard to the nature of injuries sustained by the informant, in my considered opinion, no useful purpose would be served by keeping the applicant behind the bars. Hence, I pass the following order :

### **ORDER**

- (i) Applicant – Nikhil Balasaheb Gole shall be released on bail in Crime No.344 of 2019 registered with Police Station Kothrud, Pune, on his executing P.R.Bond in the sum of Rs.20,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.

- (iii) The applicant shall not indulge in similar activities in future.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

**(V. G. BISHT, J.)**