

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3924 OF 2021**

Mauli @ Dnyaneshwar @ Abhishek

Maruti Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Rajiv Patil a/w Ms Vanita Shinde and Mr. Hemant Walekar for the Applicant.

Mr. P.H. Gaikwad Patil, APP for the State.

Ms Prajkta Dhapte, PSI, Talegaon Dabhade, Police Station, Present.

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CORAM : N.R. BORKAR, J.

DATED : 10 JANUARY 2023

P.C. :-

This is an application under Section 439 of the Code of Criminal Procedure for bail.

2. The applicant came to be arrested in Crime No. 332 of 2016 registered at Talegaon Dabhade police station for the offences punishable under Sections 302, 395, 120(B), 201, 143, 147, 148, 149 of the Indian Penal Code, Sections 3, 4, 25, 27 of the Arms Act and Sections 3(1)(i)(ii), 3(4) of the Maharashtra Control of Organised Crime Act.

3. I have heard the learned senior counsel for the applicant and the learned APP for the respondent-State and perused the affidavit-in-reply filed by the State.

4. According to the prosecution, on 16 October 2016 the present applicant alongwith other co-accused for pecuniary gain and to establish supremacy of their gang committed the murder of the deceased by assaulting him by Koyta and shooting him by firearm.

5. According to the eye-witnesses one of the assailants was Abhishek Gaikwad. According to the prosecution, the present applicant whose name is Mauli @ Dnyaneshwar Gaikwad is the same assailant, to whom the eye-witnesses have referred to in their statement as Abhishek Gaikwad.

6. The learned senior counsel for the applicant submits that there is no document or any other material to show that the name of the applicant is Abhishek Gaikwad or he is known by that name. According to the learned senior counsel for the applicant, case is of a mistaken identity. It is submitted that considering the facts and circumstances of the case, the applicant may be released on bail.

7. On the other hand, the learned APP submits that the applicant is involved in serious offence of murder. It is submitted that trial Court has already framed the charges. It is submitted that the prosecution may thus be granted opportunity to prove it's case against the present applicant.

8. I have perused the statement of the eye-witnesses. According to them one of the assailants was Abhishek Gaikwad. The name of applicant is Mauli @ Dnyaneshwar Maruti Gaikwad. In such situation after the arrest of the applicant it was necessary for the prosecution to record the

supplementary statement of the eye-witnesses that the present applicant is the same assailant to whom they in their statement referred to as Abhishek Gaikwad. It was possible for the prosecution to record the statements of neighbors of the applicant that in their locality the applicant is known by the name Abhishek Gaikwad. However, the same is not done. In absence of such material, I have no option except to release the applicant on bail. Hence, the following order is passed:

- (i) Application is allowed.
- (ii) The applicant shall be released on bail in Crime No. 332 of 2016 registered at Talegaon Dabhade police station for the offences punishable under Sections 302, 395, 120(B), 201, 143, 147, 148, 149 of the Indian Penal Code, Sections 3, 4, 25, 27 of the Arms Act and Sections 3(1)(i)(ii), 3(4) of the Maharashtra Control of Organised Crime Act on furnishing PR bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall attend the concerned police station once in a month i.e., on first Saturday between 11.00 a.m. to 2.00 p.m. till conclusion of trial.

(N.R. BORKAR, J.)

Digitally
signed by
MANGALTAI
JAYWANT
JADHAV
Date:
2023.02.13
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