



PMB

934.BA.3112-23.doc

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

BAIL APPLICATION NO.3112 OF 2023

AMAR KAILAS GAVHANE	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Aniket Nikam i/b. Adv. Amit Icham for the applicant.
Mr. P. H. Gaikwad, APP for the State.
Mr. Abaso Khade, Kondhwa Police Station, Pune.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 14, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 302, 120-B, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short), under Sections 37(1), 135 of the Maharashtra Police Act, under Section 7 of Criminal Law Amendment Act and under Section 4(25) of the Arms Act registered on 04.08.2022 vide FIR bearing C.R. No.797 of 2022 with Kondhwa Police Station, District Pune.

3. There are in all five accused. The applicant is the accused No.2. One of the co-accused - Krushna Ganesh Marathe has been enlarged on bail by the order passed by this Court on 06.09.2023 in Criminal Bail Application No.1541 of 2023. The order reads thus :-

"2. This is an application for bail in respect of the offence punishable under sections 302, 120B, 506 read with 34 of the Indian Penal Code, under sections 4(25) of the Arms Act, under section 135 of the Maharashtra Police Act and under section 7 of the Criminal Law Amendment Act registered vide C.R. No. 797 of 2022 with Kondhwa Police Station. The date of the incident is 03/08/2022. The date of the FIR is 04/08/2022. The applicant is arrested on 04/08/2022.

3. There was some previous misunderstanding between the accused no. 1 and the deceased. The applicant is accused no. 3. On the date of the incident i.e. 03/08/2022, it is alleged that the accused no. 1, and other accused met the deceased. The deceased wanted to tender apology to the accused no.1 as regards the previous misunderstanding. All of a sudden, the accused no. 1 hit the deceased on his head with a sharp weapon (Palghan). The role assigned to the applicant is that though he had accompanied the deceased, he was standing with the friend of the deceased with his hand on his shoulder. There are no criminal antecedents reported against the applicant. No overt act is attributed to him. Considering the role of the applicant, the applicant can be enlarged on bail. The applicant is in custody from 04/08/2022, almost for the period of 1 year and 1 month. The investigation is complete. The charge-sheet has been filed."

4. No doubt the applicant cannot claim parity but for convenience I have reproduced the order which has set out

the facts. The case of the prosecution is that one Mr. Sachin Rathod was antagonised by the victim whom he decided to teach a lesson. The case of the prosecution is that the applicant helped the said Rathod and that the assailant acted at the behest of the present applicant.

5. Learned APP pointed out that the applicant was present at the spot and even seen in the CCTV footage. Learned APP submitted that the applicant was even externed on the previous occasion.

6. The applicant is not the actual assailant. The applicant's complicity has come on record on the basis of the statement of the co-accused. The applicant was seen near the spot. There is no recovery from the present applicant. There are no criminal antecedents reported against the applicant. The applicant was arrested on 04.08.2022 and is now in custody for more than sixteen months. In the facts and circumstances of the present case I am inclined to enlarge the applicant on bail but the same will have to be by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Amar Kailas Gavhane in connection with FIR bearing C.R. No.797 of 2022 registered with Kondhwa Police Station, Pune shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall report to the nearest police station close to his residence while staying outside Pune District, once in a week i.e. every Sunday between 11.00 a.m. and 1.00 p.m. till the trial concludes.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer while residing outside Pune District and shall keep him updated, in case there is any change.
- (f) Except for attending the trial and that too with an advance intimation to the Investigating Officer, the

applicant shall not enter Pune District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) In case any of the eye witness or other witnesses seek protection, the same will be duly considered in accordance with law.

7. The application is disposed of.

(M. S. KARNIK, J.)