

Sessions Case No.803/2017

(CNR NO.MHPU01-014181-2017)

ORDER BELOW EXH. 61

1] By filing this application under Section 439 of the Code of Criminal Procedure, the applicant accused Vicky Vijay Kalekar requested to release him on regular bail, in connection with Crime No.297/2017 registered with Warje Malwadi police station, for the offences punishable under Sections 141, 143, 144, 148, 149, 326, 307, 504, 506 of IPC and under Section 4(25) of the Arms Act and 37(1) r/w. 135 of the B.P.act.

2] Briefly stated the prosecution case is that the complainant Nitin Genbhau Sangale made his statement dated 31/7/2017 on the allegation that on 29/7/2017 he has attended the Court for his case. Akash Kalekar, Vikas Shirsat, Dadya Kalekar has met and gave threats that his friend Bablu Khatape has initiated false case against them and they told that they will see him . On the same day at evening time, Dadya Kalekar gave me phone call and abused him and told that तुला मस्ती आली का. Thereafter on 30/7/2007 at about 8.30 p.m. the complainant was in his saloon shop that time Dada Kalekar gave a sickle blow on the glass of the shop and broken it. Ganesh Wanjale, Pandurang Wanjale, Vikas Shirsat snatched the complainant from the shop and taken him out of the shop. The accused Ganesh Wangjale has assaulted by a sickle on his head, Vikas Shirsat assaulted by sickle and the present applicant Pandurang Wanjale has assaulted by stone on his back. The accused Dada Kalekar has stabbed the weapon on his back. Akash Kalekar and Vicky Kalekar has gave a sickle blow due to that he received the serious injuries. On his statement the crime has been registered.

3] It is submitted that the previous bail application of the applicant has been rejected on the sole ground that he is having

criminal antecedents. The applicant was arrested on 31.07.2017 and since then he is in judicial custody. After completion of investigation chargesheet has been presented and committed to this Court. It is pertinent to note that the accused Vikas Shirsat, Sachin Yenpure, Pandurang Wanjale and Ganesh Wanjale have been released on regular bail and accused Sunil has been released on anticipatory bail and so the parity ground is applicable to this applicant also. There is no recovery at the instance of the present applicant. The applicant undertakes to abide all the terms and conditions as imposed by the Court. Applicant is ready to furnish surety to the satisfaction of the Court. Lastly prayed to allow the application.

4] In response to the notice, the prosecution resisted the application by filing say thereon contending interalia that the offence is very serious in nature. Name of the accused is in the FIR. Injury certificate is on record. Statements of witnesses are on record, which reveal the role of the applicant accused. Parity cannot be given to this accused. His role is different than that of those who are released on bail. The affidavit of the complainant cannot be taken into consideration. Lastly prayed to dismiss the application.

5] Heard learned advocate for the applicant and learned APP for the prosecution. Read the case papers and the FIR. It reveals that the complainant Nitin Genbhau Sangale made his statement dated 31/7/2017 on the allegation that on 29/7/2017 he has attended the Court for his case. Akash Kalekar, Vikas Shirsat, Dadya Kalekar has met and gave threats that his friend Bablu Khatape has initiated false case against them and they told that they will see him . On the same day at evening time, Dadya Kalekar gave me phone call and abused him and told that तुला मस्ती आली का. Thereafter on 30/7/2007 at about 8.30 p.m. the complainant was in his saloon shop that time Dada Kalekar gave a sickle blow on the glass of the shop and broken it. Ganesh

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6] On going through the rival submissions it appears that investigation has been completed and chargesheet has been filed on record. The previous bail application was rejected on the ground that there was antecedents. However, applicant has produced a copy of judgment in RCC No. 3974/2012 and it appears that on 24.05.2018 the present applicant has been acquitted from that matter. Further more, the applicant has produced a copy of affidavit of present complainant Nitin Genbhau Sangale and in the said affidavit it has been contended that on 30.07.2012 at about 8.30 p.m. some unknown persons have assaulted him and they have broken the glass of his shop and due to that he was afraid and due to that he was unable to understand what is going on. On 31.07.2012 his mental state was not proper. Police have not recorded his statement, but taken his signature on blank paper. Vicky Kalekar has no concerned with this matter.

7] On going through this affidavit, it reveals that the name of the applicant has been taken by the complainant inadvertently. There are allegations against the police that police have obtained the signature of the complainant on blank paper. In such circumstances, no purpose will suffice by keeping the applicant accused behind the bars. So the applicant accused is entitled to be released on bail. In the result, I pass the following order :

ORDER

- 1] The application is allowed on the following conditions.
- 2] The applicant Vicky Vijay Kalekar, in connection with crime No. 297/2018 registered with Warje Malwadi police station, be released on regular bail on furnishing PR bond of **Rs. 50,000/-** with one or two solvent sureties in the like amount.
- 3] He shall not tamper, hamper the prosecution evidence.
- 4] He 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 such facts to the Court or to any police officer.
- 5] Bail before this Court.

(V.K.Kadam)

Date: 01.11.2018

Additional Sessions Judge, Pune.