

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 27 OF 2015

1. Shankar Sudhakar Furade
2. Mahadev Sudhakar Furade

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Harshad Nimbalkar a/w Mr. P. G. Sarda for Applicants
Mr. A. S. Shitole APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JANUARY 21, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 111/2014 registered at Pangri Police Station, Dist. Solapur for offence punishable under sections 302, 452, 323 r/w 34 of Indian Penal Code. Investigation is completed and charge-sheet is filed on 04/11/2014.

2) It is the case of prosecution that on 30/08/2014, Ashabai Navale lodged a report at the police station alleging therein that on 29/08/2014, her husband had been to the square for having a chat. At that time, Shankar Furade,

Mahadev Furade & Sudhakar Furade had approached him. They questioned him about the whereabouts of Vishal and soon thereafter, mounted assault upon Aabasaheb with a wooden log. On the basis of her report, offence was registered against all the three persons. It appears from the F.I.R. that there was some altercation between Vishal and original accused no. 1, a few days before the alleged incident.

3) In the course of investigation, investigating officer has recorded the statements of eye witnesses. Eye witnesses Lahu Navale and Dattatray Markad had specifically stated that it was Sudhakar Furade who had questioned Aabasaheb about the whereabouts of Vishal and suddenly mounted assault with a wooden log on his head. Post mortem notes would also show that deceased had sustained one contused lacerated wound over left temporal region measuring 2 X 2 X 1 inch. The said blow was fatal. It had not only caused fracture of neck, but has caused fracture to parietal bone with a depressed fracture on left temporal region. The Subdural Hemorrhage was present. Eye witnesses have specifically stated that present applicants are only standing by the side of the road when the alleged incident had occurred.

4) Learned counsel for the applicants rightly submits that in the given set of circumstances, it cannot be presumed that present applicants had shared common intention with principal accused no. 1 or that they had any knowledge that accused no. 1 would mount assault upon the deceased. No doubt, there is a variance in the statement of first informant and eye witnesses. This is a case of direct evidence and there is evidence against original accused no. 1 who is not before the Court.

5) Taking into consideration the papers of investigation and submissions advanced across the bar, this Court is inclined to grant bail to the present applicants. Observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.

(iii) Original accused Sudhakar Furade shall not claim parity with the present applicants.

Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)