

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 10 OF 2015

Shri Kishore Baliram Baru ... Applicant
vs.
The State of Maharashtra ... Respondents

Mr. Shaikh Ejaz Noormohammad, Advocate for the applicant
Ms. Vira Shinde, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 21st January, 2015.

P.C.

The applicant herein is arrested on 22.5.2014 in Crime No.96 of 2014 registered at Panchavati Police Station, Nashik, initially for the offence punishable under Section 302, 323, 504, 506 read with Section 34 of Indian Penal Code. The investigation is completed and charge sheet is filed on 6.6.2014. The applicant herein along with other accused is charge-sheeted for the offence punishable under Sections 302, 143, 147, 148, 149, 323, 504 and 506 of IPC.

2. At the outset, the learned APP submits that the case is registered as Sessions Case No. 255 of 2014. Charge is framed against the accused. The next date for trial is 23.1.2015.

3. The learned counsel for the applicant submits that irrespective of the

fact that the trial has commenced, there is no incriminating material against the present applicant and, therefore, he is entitled to be enlarged on bail.

4. The learned APP further submits a report showing that the applicant has criminal antecedents. That he is an accused in as many as 9 cases. Crime No.74 of 2014 is registered against the applicant for the offence punishable under Section 302 read with Section 34 of IPA and Arms Act and the same is registered as R.C.C. N.825 of 2014 and, therefore, according to the learned APP, the applicant is not entitled to grant of bail.

5. As against this, the learned counsel for the applicant submits that the criminal antecedents of the accused should not be an impediment to consider an application under Section 439 of Cr.P.C. and that merits of the said crime can be considered independently irrespective of the criminal antecedents. In view of this, the Court has heard the application on merits.

6. It is the case of the prosecution that on 10th March, 2014, Suresh Hande lodged a report at the police station alleging therein that on the said date, he could not find the traces of his son Pravin. After some time, a phone call was received by one unknown person who claimed to be a police officer. The receiver of the phone informed the complainant that Pravin has been admitted in a civil

hospital. The complainant rushed to the civil hospital wherein his son was already declared dead. The complainant met the friend of deceased i.e. Swapnil Pawar, who informed him that on 9.3.2014 at about 7.30 to 8 p.m. he along with Pravin, Durgesh, Sagar and others had been to Makhamalabad for dinner. They had consumed alcohol. They came near Bachav Hospital. They met Akash Gode and Pravin. There was an altercation between Akash Gode and Pravin. Pravin had attempted to explain to Akash. However, Akash had slapped Pravin. The people had gathered in the vicinity and had asked the boys to leave the spot. Thereafter, Pravin had a quarrel with Tukaram, Nilesh Nerurkar. He also had a quarrel with Durgesh. After some time, Pravin was proceeding towards Manebai School. At that time Tukaram, Nilesh and his associates had stopped Pravin and suddenly Tukaram and Nilesh raised a quarrel with Pravin and Chothwe had fired at Pravin with a country-made pistol. Thereafter, all the persons had fled from the place of incident. The statements of Swapnil Pawar and Durgesh were recorded under Section 161 as well as 164 of Cr.P.C.

7. The learned counsel for the applicant has vehemently submitted that there is variance in the statements of the eye-witnesses which is recorded under Sections 161 and 164 of Cr.P.C. and therefore, the applicant deserves to be enlarged on bail as no implicit reliance can be placed on the said statements. The learned counsel further submits that right from the previous day the deceased was

on a rampage. He was under the influence of alcohol. He was raising quarrel with different people at different places. It is further submitted that the witnesses whose statements are recorded under Section 164 of Cr.P.C. were also under the influence of alcohol and therefore, no implicit reliance can be placed.

8. All these aspects are to be considered in the course of recording substantive evidence at the time of trial. At the stage of grant of bail, this Court cannot meticulously look into variance in the statements of the witnesses or their state of mind. It is true that both the witnesses are eye-witnesses. Although the act of firing is attributed to Chothwe, the charge sheet is filed under Sections 143,147 and 148 of IPC and, therefore, common object can be attributed to the present applicant. The case of the applicant cannot be segregated at this stage. The Court also cannot be oblivious of the fact that the applicant herein has criminal antecedents. It would be relevant to consider the antecedents in view of the fact that an accused who is granted bail by a Court of law would misuse liberty and indulge into similar activities in future and, therefore, he would not be entitled to grant of bail.

9. In view of the above discussion, the application being sans merit, stands rejected.

10. The observations made hereinabove are prima facie in nature and are

restricted to the consideration of bail application. The learned Sessions Judge shall not be influenced by the same at the time of trial.

(SMT.SADHANA S.JADHAV, J.)