

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 72 OF 2015

Vishnu Digambar Shinde Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Jaydeep Mane for Applicant

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 arrested on 07/11/2014 in crime no. 266 of 2014 registered at Mohol Police Station for offence punishable under section 364, 323, 504, 302 r/w 34 of Indian Penal Code and under section 3(1) (10) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2) It is the case of prosecution that one Akubai Kale lodged a missing complaint on 21/07/2014, contending therein that on 18/07/2014, she had been to visit village fair at village Lamboti in defiance to the will of her husband. Her husband Goturam had then gone to village Lamboti and had quarreled with her. He then left her and her sons and went away. Since then,

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he had not returned home. On 28/07/2014, Anil Kale i.e. brother-in-law of Akubai and brother of Goturam lodged F.I.R. at police station alleging therein that on 19/07/2014, in the morning at about 8.30 am complainant had visited his house and informed him that she had been to village Lamboti along with her husband and children. At that time, present applicant and others had approached them. They were armed with swords and deadly weapons. They had raised quarrel with her husband over the past issues and thereafter, they had abused the husband and wife by referring to the caste. That her husband Goturam was assaulted in her presence. She got scared and went home, however, Goturam had not returned home. Complainant had inquired with the relatives. On 21/07/2014, Akubai Kale had lodged missing report. According to the complainant present applicant and others had abducted Goturam.

3) The supplementary statement of the complainant was recorded on 18/09/2014. The said statement shows that police had shown the complainant the photo of an unidentified dead body which had met an accidental death on 23/07/2014. Crime no. 146 of 2014 was registered for offence punishable under section 279, 304 (A) of Indian Penal Code and section 184 and 134 of Motor Vehicles Act. Complainant had identified the dead body to be that of

Goturam and hence, section 302 of I.P.C. was added in crime no. 266 of 2014.

4) Learned counsel for the applicant has drawn the attention of this Court to the complaint dated 23/07/2014 filed by the police head constable Balu Rathod, wherein one person had died an accidental death on high way and his body was lying in an abandoned condition. The said body was denuded of all clothes. A vehicle was passed on his body. The said body was unclaimed for quite sometime and therefore, police had performed funeral on the dead body after performing post mortem. Subsequently, body was exhumed and second post mortem was conducted on the said dead body. Learned counsel for the applicant has further drawn the attention of this Court to the application filed by the present applicant and rest of the villagers of village Lamboti, complaining Superintendent of Solapur (Rural) that villagers are fed up of the nefarious activities of Goturam Kale. They had informed the police that despite several complaints, no action is being taken against the said accused and it has become impossible for them to live peacefully in the said village.

5) Deceased Goturam had criminal antecedents. That missing report would clearly show that Goturam had left company of his wife and children on 18/07/2014 and the reason assigned was that there was matrimonial

dispute between Goturam and his wife, however, subsequently, brother of Goturam has changed the version of Akubai Kale and has stated that Goturam had been abducted. In fact, it appears from the records that Goturam had died an accidental death on the high way. The co-accused are enlarged on bail by Special Judge, Solapur vide order dated 07/01/2015. The allegations against the said accused is para materia the same as that alleged against present applicant and by virtue of doctrine of parity, applicant would also be entitled to the grant of bail.

6) It is made clear that the observations made herein above are prima facie in nature and restricted to consider the application under section 439 of Code of Criminal Procedure, 1973 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) Applicant 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.

Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)