

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 131 OF 2015

Manesh alias Papdya Subhash Kadam

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Harshad Nimbalkar a/w Mr. Satyam Nimbalkar for Applicant
Ms. Vira Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 3, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 17/08/2014 in crime no. 115 of 2014 registered at Rajgad Police Station for offence punishable under sections 302, 307, 143, 147, 148, 149 & 427 of Indian Penal Code. Investigation is completed and charge-sheet is filed on 18/09/2014.

2) It is the case of prosecution that on 23/06/2014, Rishikesh Khedkar lodged a report at the police station alleging therein that Balaji Kadam and others had caused homicidal death of Vinayak Kadam on 07/11/2012 and since then there were disputes between two groups. It is alleged that on

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23/06/2014, at about 9.00 am, complainant had accompanied Balaji kadam and they were proceeding towards Nasrapur. They had hypothecated gold and had received an amount of Rs. 55,413/-. Complainant accompanied Balaji Kadam to Pune to purchase a Scorpio. They were going towards Pune in Swift car. Complainant was driving the said car. On the way, they met Aniket Shete who told Balaji Kadam that he also wanted to go to Pune and therefore, Aniket Shete accompanied the duo. They had halted near Arun Timbers. Thereafter, they had started proceeding towards Pune. They had stopped at Ganesh Timbers in order to enable Aniket Shete to alight from the car. At about 12.20 noon, a motorcycle followed them. The motorcycle had obstructed the way of the Swift car. Soon thereafter, the Bolero jeep halted near them. 7 – 8 persons, armed with deadly weapons, alighted from the said jeep. Balaji Kadam had sensed the danger and therefore, asked Aniket Shete and complainant to flee from the spot. Aniket Shete ran towards Kondhalkar Dairy. Balaji Kadam started running towards Ganesh Timbers. The Bolero jeep standing next to him and therefore, he could not open the door, however, Balaji had alighted from the car. Complainant had also followed him. Persons who were driving the motorcycle were armed with revolver. One of the

person shot Balaji Kadam. Balaji Kadam had collapsed. After Balaji had collapsed, other accused including present applicant had mounted assault upon Balaji. Complainant was requesting them not to assault Balaji and at that time, one of them had also shot at complainant. He ran towards police station and lodged the report.

3) Supplementary statement of the complainant was recorded on 24/06/2014. In the supplementary statement, he has stated that after motorcycle had obstructed the Swift car, all of them alighted from the car and started running towards Cheladi Phata. Balaji was assaulted by Rahul Valekar and Nitin Ingolkar who had dashed the car by their motorcycle. Complainant had hid behind the tree and had seen other accused assaulting Balaji. He has specifically stated that present applicant was guarding in order to see that Balaji is not rescued by anybody. He has further clarified that since he was scared, he could not give the details as far as the nature of assault of Balaji Kadam is concerned. Beside the statement of eye witness, there is no other incriminating material against present applicant.

4) Learned counsel for the applicant has submitted that two months prior to the said incident, complainant had implicated present applicant in crime no. 63 of 2014 registered at Rajgad Police Station for offence punishable under section 307 of Indian Penal Code. Applicant had filed an application seeking pre-arrest bail. That the applicant was granted pre-arrest bail vide order dated 23/06/2014. Incident in question in the present case is dated 23/06/2014. Learned counsel for the applicant submits that in fact, applicant was attending the Court on that day. That he has been falsely implicated by complainant.

5) Learned APP submits that there is no criminal antecedents.

5) Be that as it may, it prima facie appears that there is inherent inconsistency in the statement of first informant who happens to be eye witness about the nature of assault. In the supplementary statement, complainant has specifically stated that present applicant was only guarding and had not actually participated in the assault. Applicant has made out prima facie case for grant of bail. However, it is made clear that 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) 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.
- (iii) Applicant shall attend Rajgad Police Station on first Sunday of each month, between 10.00 am to 12.00 noon, till the conclusion of trial.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)