

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 185 OF 2015

Darshan Prabhakar Mhatre ... Applicant
vs.

The State of Maharashtra ... Respondent

Mr. Sanjiv Punalekar i/b. Mr. Keshav S. Chavan, Advocate, for the applicant.

Ms. P.P.Shinde, APP, for the State

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 16th June, 2015.

P.C.

Heard.

2. The application filed by the present application under Section 439 of Cr.P.C. was heard on 11.12.2014. After hearing the matter at length, this Court was not inclined to grant bail. The learned counsel for the applicant sought liberty to withdraw the application. Liberty as prayed for was granted in the interest of justice and the application was dismissed as withdrawn.

3. This Court had specifically observed that the case rests upon circumstantial evidence and that the investigating agency had conducted the

test identification parade without obtaining permission under Section 173(8) of Cr.P.C. The copy of the test identification parade was not submitted before this Court or in the charge sheet, but was directly tendered before the Sessions Court at the time of final hearing of the bail application. This Court had also observed that the learned Sessions Judge seized with the matter shall take note of this aspect at the stage of 294 Cr.P.C. The observations were made only to bring irregularities in the investigation on record and to bring it to the notice of the superior authorities of the police department. Thereafter, this application was heard on 9.3.2015 by Hon'ble Justice Revati Mohite Dere. Since the earlier application was withdrawn before this Court, the application is being placed and heard by this Court.

4. Today, the learned counsel for the applicant has once again argued the matter on merits. According to the learned counsel for the applicant, the witness namely Mr. Sapte identified the present applicant. One Mr. Jitendra Shankar Shankulkar has identified the present applicant, but has not specifically stated that he is one of the assailants of the victim. The learned counsel once again placed implicit reliance upon the test identification parade despite the fact that this Court had observed that this irregularity shall be considered at the stage of 294 Cr.P.C.

According to the learned counsel, the witness had not given the description of the accused in their statement under Section 161 of Cr.P.C. and, therefore, the test identification parade would lose its significance. At the first instance, the applicant was heard at length on merits and thereafter the learned counsel had sought liberty to withdraw the application. Today, there is no reason to consider the same issue once again. The applicant cannot place reliance upon the irregularities in the test identification parade at the stage of bail since the case rests upon the circumstantial evidence and all these aspects need to be confronted with the witnesses.

5. In view of this, the application being sans merits, stands rejected.

(SMT.SADHANA S.JADHAV, J.)