

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.321 OF 2015

Anvar Sabirali Hashmi

...Applicant

V/s.

The State of Maharashtra

...Respondents.

Mr. Sharif Shaikh i/b A. A. Siddiqui for the Applicant.

Mr. Y. M. Nakhawa, APP for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATED : 27th AUGUST, 2015.

P.C.

1. Heard learned counsel for the applicant and the learned APP for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No.430/2013 registered with the Tilak Nagar Police Station for the alleged offences punishable under sections 395, 396, 397, 452, 347 of IPC read with section 135 of Bombay Police Act.

3. One Sanjaykumar Biru Mahto is the complainant. He has alleged that on 29/12/2013, when he was working in the Vijayalaxmi Bar at Chembur, the alleged incident took place. According to him,

Virendra Prasad Keshari, the deceased was also working in the said bar. He has stated that the staff used to sleep in the staff room of the said Bar. It is alleged that one person by the name Prakash Sharma, who was initially working as a waiter in the Bar, entered the staff room of the Bar along with 6-7 persons. The said person allegedly tied the hands and legs of the staff members sleeping in the room and started assaulting them. It is alleged that the cell phones of the said persons were also taken by the accused and that Prakash Sharma assaulted Virendra Prasad Keshari. The said Virendra Prasad Keshari succumbed to his injuries on 2/1/2014. A complaint was lodged as against Prakash Sharma and other unknown persons. The present applicant was arrested on 9/1/2014.

4. Learned counsel for the applicant seeks bail on the ground of parity . He submits that this Court has enlarged three co-accused viz. Sagar @ Mohammed Akbar, Mohd Hasan Liyakat Shaikh Mansuri and Rafiq Ahmed Shaikh, on bail vide order dated 2/9/2014 and 8/10/2014. He relied on certain observations made in the said orders in support of his submissions. In the order dated 2/9/2014 passed in Criminal Bail Application No.1138/2014, he relied on paragraph 4 of the said order which reads thus:

“The learned counsel for the applicant has rightly submitted that no test identification parade was held. However, according to learned APP, test identification parade was rather held but the same does not find place in the compilation of the charge sheet. Learned Counsel for the applicant submits that this would indicate that the prosecution does not wish to rely upon the test identification parade which was held by the investigating officer.”

5. He also relied on certain observations made in paragraph 3 of the order dated 8/10/2014 passed in Criminal Bail Application No.1217/2014. The observation in paragraph 3 of the said order reads thus:

“The injured had succumbed to the injuries on 2.1.2014. The compilation of the charge-sheet shows that a report is filed by the Investigating Officer before the Sessions Court, Mumbai in May 2014. The said report indicates that the accused persons had been identified by the complainant at the time of test identification parade which was held in Central Jail at Thane. It is pertinent to note that the date of the Test identification parade is not mentioned in the said report. The name of the Tahsildar is also not mentioned. No statement of the witness has been recorded to indicate that they had identified the accused at the time of test identification parade after the T.I. Parade was conducted. The investigation is completed and charge-sheet is filed. The date of filing of the charge sheet is not known. The compilation of the charge-sheet does not include any report of the test identification parade. It is an admitted position that the assailants were only termed as “the associates of Prakash Sharma” and the witnesses were not knowing the accused persons i.e. the present applicants. The compilation of the charge-sheet further shows that on 29.1.2014, memorandum of

more than three accused was recorded under Section 27 of the Indian Evidence Act and a knife has been recovered in the staff room of the said hotel where the incident had occurred. It is not the case of the prosecution that the applicants herein had visited the said premises after the incident. Three memorandums are recorded for recovery of one knife and, therefore, the learned Counsel for the applicants rightly submits that the said recovery cannot be considered as an incriminating circumstance against the present applicants since the charge-sheet is filed against six persons. It is further submitted that the compilation of the charge sheet does not include any report of test identification parade and the same does not find place in the index of the charge-sheet also and, therefore, it is clear that the prosecution does not wish to rely upon the test identification parade.

6. In view of the observations made in the said orders, the learned counsel for the applicant submits that the applicant is also entitled to be enlarged on bail on the ground of parity. If not on parity, the learned counsel submits that, even otherwise, the applicant is entitled to be enlarged on bail on merits. He submitted that the incident in question took place on 29/12/2013 and the identification parade was held on 11/4/2014. He submits that there was a considerable delay in holding of the Identification parade, thereby affecting the evidentiary value of the identification parade. He submits that the subsequent statements recorded after the identification parade do not corroborate the earlier version of the witnesses, with respect to the alleged incident.

7. Learned APP opposes the application. He submits that the applicant is not entitled to be enlarged on bail on the ground of parity. He further submits that as far as merits are concerned, the applicant was arrested on 9/1/2014 and that the identification parade was held on 11/4/2014, in which the applicant has been identified. He submits that pursuant to the identification parade, statements of all the witnesses, who have identified the applicant, have been recorded on the very same date.

8. Perused the papers. It is not in dispute that the incident in question took place on 29/12/2014 and in the said incident one Virendra Prasad Keshari lost his life in an assault by co-accused Prakash Sharma. The present applicant was arrested on 9/1/2014 and the charge sheet was filed on 7/4/2014. It appears that on 11/4/2014 the identification parade was held and the present applicant had been identified by the complainant and Kailash Kisan Yadav. As far as the complainant is concerned, he has specifically stated that the present applicant entered the room with a knife in his hand alongwith Prakash Sharma. The statements of all the witnesses have been recorded after the identification parade. Indeed, while granting bail to the other co-accused who have also been identified, it appears that it was not

pointed out to this Court, that the statement of witnesses had been recorded by the police after the test identification parade. Perusal of paragraph 3 of the order dated 8/10/2014 speaks for itself. It was not brought to the notice of the Court that the statement of witnesses were recorded after holding of the identification parade and hence the applicants in those applications were enlarged on bail. As far as merits are concerned, merely because there was a delay in holding of the identification parade cannot be a ground to enlarge the applicant on bail. The evidentiary value of the identification parade, will be considered by the Trial Court, at the time of recording of the evidence. The fact remains that the applicant had been identified by the complainant and some other witness. Hence, it is not a fit case to enlarge the applicant on bail. The application is therefore rejected and disposed of.

9. At this stage, the learned APP states that the trial has already commenced and two witnesses have been examined in the said case

(REVATI MOHITE DERE, J.)