

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 497 OF 2015

Mohammas Sharif Mulla Karimbaksh Kadari. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Prashant G. Pandey, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

Mr. S.S. Nethe, API, RCF Police Station.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : OCTOBER 19, 2015

P.C.:

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 22/10/2013 in Crime No. 331 of 2013 registered at Chembur Police Station for offence punishable under section 302, 326, 324, 504, 506(2), 143,

147, 148, 149 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 22/10/2013 Rehana Tabrej Khan lodged a report at the police station alleging therein that on 22/10/2013 at about 9 a.m. her minor niece namely Ashiya was playing in the compound. That tin partition which was erected to the compound of the Madarasa had fallen down. The present applicant got enraged and had assaulted her mother and abused her. Due to this, there was an altercation. It is alleged that the present applicant had assaulted Rehana and abused her. That he had assaulted her with bamboo on her wrist which got fractured. His uncle Tabrej had tried to intervene. But he had also assaulted on his leg. The complainant was assaulted by the present applicant and his associates. His maternal aunt Shabana had tried to intervene. She was also assaulted by Bamboo. Tabrej was assaulted. He was admitted in the hospital.

4 That the statement of Tabrej was recorded. He had disclosed to the police that the present applicant had assaulted him on his tibia with a bamboo. Similarly, Kadri had also assaulted him. It is alleged that Rizwan and Sayam had also assaulted him on his back and stomach. Tabrej had succumbed to the injuries in the hospital on 25/10/2013 at about 7.15 a.m.

5 The post mortem notes would indicate that the deceased had sustained as many as 17 injuries. The said injuries were in the nature of contusions, abrasions and fractures. The cause of death is heamorrhagic shock due to multiple injuries.

6 The applicant had filed an application seeking bail. On 28/12/2014 the learned Counsel for the applicant had sought liberty to withdraw the application. Liberty as prayed for was granted in the interest of justice.

7 The learned Counsel for the applicant submits that by an order dated 18th March, 2015 and 16th April, 2015 two accused to whom similar role was attributed, have been enlarged on bail by this court. The learned Counsel for the applicant submits that this is a case arising out of cross case. The present applicant was also injured. He had sustained an incise wound on his palm, when he had attempted to save himself from the attack of the rival parties.

8 Upon perusal of the charge-sheet, it appears that the whole dispute was over an open plot of land which was adjacent to the house of the applicant and that they had encroached the said land for the purpose of Madarasa. The family of the deceased was aggrieved by the said encroachment and had approached the applicant and others and there was an altercation.

9 The learned Counsel for the applicant submits that the very fact that the deceased and the other injured were assaulted with bamboo, would be sufficient to infer that they had no intention to cause

homicidal death of Tabrej. The incident had occurred on the spur of the moment. Even according to the first informant, the quarrel was with Rehana and Tabrej had intervened. It is the case of the prosecution that initially it was Rehana who was assaulted by the applicant with bamboo and only when Tabrej had attempted to intervene in the quarrel, he was assaulted. The learned Counsel for the applicant submits that taking the compilation of the charge-sheet as it is without addition or subtraction, it cannot be said that the applicant herein had intended to cause homicidal death of Tabrej. Even according to the deceased, the applicant had assaulted him on the tibia. It is an unfortunate incident that in the said altercation Tabrej had succumbed to the injuries. The learned Counsel submits that the applicant is not the author of the fatal injury. That the cause of death is haemorrhagic shock due to multiple injuries and the liability cannot be fixed upon any particular accused.

10 The change in the circumstances according to the learned Counsel for the applicant is that after withdrawal of the application by

the present applicant, two accused persons to whom similar role has been attributed, has been enlarged on bail by this Court after taking into consideration the alleged dying declaration of Tabrej.

11 In view of this and more particularly that the applicant has been in custody since 2013, the applicant deserves to be enlarged on bail. However, it is made clear that co-accused shall not claim parity with the present applicant.

12 The observations made hereinabove are prima facie in nature. The same cannot be considered while decided the application for quashing of FIR or discharge or at the time trial. The same be decided on its own merits in accordance with law.

13 Hence, following order is passed :

ORDER

(i) The application is allowed.

- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police on first Sunday of each month between 10 a.m. to 12 noon till conclusion of the trial.
- (iv) The applicant shall give his present address and telephone number to the concerned police station as well as the trial court.
- (v) If there is change in the address, the applicant shall inform the same to the concerned police station as well as the trial Court.
- (vi) The applicant shall not tamper or attempt to influence any person concerned with the case.

(vii) It is made clear that if there is breach of any of the conditions as stated above, the prosecution is at liberty to seek cancellation of applicant's bail.

14 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)