

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 515 OF 2015

Bharat s/o. Ramdas Dhokrat. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Satish A. Gaikwad, advocate for Applicant.

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

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JULY 21, 2015

P.C.:

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

2 This is a successive bail application under section 439 of the Code of Criminal Procedure, 1973 filed by the applicant. By a detailed order dated 5/1/2015, this Court (Coram : S.S. Jadhav, J) had rejected the earlier application filed by the applicant under

Section 439 of the Code of Criminal Procedure, 1973. This Court had observed that the applicant had concocted the case.

3 It is the case of prosecution that on 03/02/2014, applicant had lodged a report at the police station alleging therein that on 02/02/2014, he was returning from Jalgaon (Ravalgaon) to his house along with his wife on motorcycle. At about 8.00 pm, his father had called him telephonically when he had informed his father that he would reach home within half an hour. At about 8.30 pm, when he was at Satmori, four unknown persons accosted him. They had pushed his vehicle by the side of the road. Their faces were muffled. They had taken the wallet from the applicant. His wife had also given her Mangalsutra to them. They had requested those four persons to release them, however, they had dragged his wife. They had tied him with the help of his shirt and baniyan. They had assaulted him on his forearms and thereafter, they had ravished his wife and had left her abandoned nearby. Applicant managed to call his father on the cellphone to the spot. His father and his cousin Bhausahab Dhokrat

came to the spot. Applicant had disclosed the incident to them. Father of the applicant had called upon the police. Police had arrived at the spot. Applicant was taken by the police to the hospital. He has further stated that from the discussion of the people who had gathered, he learnt that the four unknown persons had killed his wife by slitting her neck.

4 In the course of investigation, it was revealed that the motorcycle on which the applicant was travelling at the given point of time, belonged to one Tanaji Thaker. That the co-accused Gulab Thakar happens to be the cousin of Tanaji Thakar. On 2.2.2014 Gulab Thakar had taken motorcycle from Tanaji at about 6 p.m. and had returned the motorcycle at about 11 p.m. While Gulab Thaker was in custody, he had admitted to have committed the offence. It is clear that the role of the applicant had surfaced in the course of investigation and since cognisable non-bailable offence was made out, the applicant was arrested.

5 This Court had also considered injuries sustained by the
deceased. That the injuries on her throat were ante-mortem in
nature. A categorical observation was made that the deceased was
not subjected to sexual assault.

6 The present application is filed by another advocate. The
learned Counsel submits that at the time of hearing of the earlier
application i.e. on 5/1/2015 legal submissions were not made and
therefore, the applicant has chosen to file successive bail application.
In paragraph-5 of the earlier order, this Court has observed that the
learned Counsel for the applicant had submitted that in the
eventuality that the applicant had any Mens Rea or any guilty mind,
he would not have lodged a report himself. At that time, this Court
was of the opinion that it can be a case of custodial death and the
applicant was bound to explain the circumstances, as contemplated
under Section 106 of the Indian Evidence act and therefore, he had
concocted the story.

7 Today, the learned Counsel for the applicant submits that although the role of the applicant is surfaced in the course of investigation and the investigating Officer had arrived at a conclusion that the story has been concocted by the applicant, it is apparent that the cognisable offence was made out and therefore, it is incumbent on the Investigating agency to file fresh FIR against the accused and thereafter, arrest the accused and therefore, according to the learned Counsel, arrest of the accused itself has resulted into grave miscarriage of justice, as there is no fresh FIR filed against the accused.

8 In fact, the whole purpose of filing of FIR is to set the law into motion and it would be only the starting point for the purpose of investigation. FIR is neither an encyclopedia nor it is a substantive evidence. It is only a statement or information which reveals that a cognisable offence has been made out. Investigation is not conducted of the offender, but the investigation is of an offence by itself and

therefore, this Court is of the opinion that no separate FIR was necessary. The applicant has been charge-sheeted.

9 The learned Counsel for the applicant has placed implicit reliance upon the Judgment and Order of the Hon'ble Apex Court in the case of **Kari Choudhary vs. Most. Sita Devi & ors. reported in AIR 2002 SC 441**. The facts of the said case are at variance with the present case. In that case, mother-in-law had lodged the FIR No. 135 for culpable homicidal death of her daughter-in-law. In the course of investigation, it was revealed that in fact, the mother-in-law had hatched the conspiracy with other daughter-in-law. The police had continued the investigation and registered other FIR No. 208. The protest complaint was dismissed by Magistrate. The Hon'ble Apex Court had observed that there cannot be two FIR against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take shape of two different FIRs and investigation can be carried out under both by the same investigating agency.

10 The Hon'ble Apex Court has further observed that “even that apart, the report submitted to the Court styling it as FIR No. 208/98 need to be considered as an information submitted to the Court regarding the new discovery made by the police during investigation that persons not named in FIR No. 135 are the real culprits. The ultimate object of every investigation is “to find out whether offences alleged have been committed and, if so, who has committed it.” There is no mandate of law that the police shall file second FIR.

11 The learned Counsel has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Lalita Kumari v/s. Govt. of U.P. and ors. reported in AIR 2014 SC 187**. The learned Counsel has fairly admitted that he had only read the head notes and not the text of the said judgment. The learned Counsel submits that the Hon'ble Apex Court has observed that if the information received does not disclose cognisable offence under the section, the police officer has the power to conduct a preliminary inquiry to ascertain whether

cognisable offence is disclosed or not. This is not the issue in question.

12 On the basis of the report given by the applicant, Crime No. 19 of 2014 was registered for offence punishable under Section 394, 376(g), 302 and 324 of the Indian Penal Code. At the outset, the cognisable offence was made out and in the course of investigation, investigating officer has rightly arrived at a conclusion that the applicant herein has concocted the case to save himself from the mandate of Section 106 of the Indian Evidence Act. In view of this, it cannot be said that there is change in the circumstances, which would necessitate this Court to consider the application afresh. The application being sans merits stands rejected.

13 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 of the Code of Criminal Procedure, 1973 and shall not be considered while deciding the application for discharge or quashing of FIR or at the

time of trial. The same be decided on its own merits in accordance with law.

14 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)