

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL BAIL APPLICATION NO. 684 OF 2015**

|                          |     |            |
|--------------------------|-----|------------|
| Shri Manoj Dhondiba Ware | ... | Applicant  |
| vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

Mr. J. Shekhar i/b. J. Shekhar & Co. Advocate, for the applicant.  
Ms. S.S.Kaushik, APP, for the State

**CORAM: SMT.SADHANA S.JADHAV,J.**  
**DATE : 26th June, 2015.**

**P.C.**

Heard. This is an application under Section 439 of Cr.P.C.  
The applicant herein is arrested on 9.4.2014 in Crime No. Crime No.263 of 2014 registered at Dadar Police Station for the offence punishable under Section 302 read with Section 34 of IPC and Section 35(a) read with Section 135 of the Bombay Police Act. The investigation is completed and charge sheet is filed.

2. It is the case of the prosecution that in September 2014, one Waman Rajput lodged a report at the police station that on 8.9.2014, it was a day of Ganesh Immersion. The residents of

Samartha Krupa Co-operative Housing Society had arranged lunch. In the afternoon at about 2.30 p.m., when the complainant was standing outside the said building, he saw some quarrel was going on. Some women folk raised hue and cry and were saying “ Save Gurudatta. and pacify the quarrel”. The cries raised by the women had attracted attention of the complainant. He had seen that two persons were assaulting Gurudatta with kick and fist blows. He rushed to the spot and has pacified the quarrel and thereafter, he was standing in front of a tea stall near the said building. He saw two persons following Gurudatta on a motorcycle. The pillion rider of the motorcycle had reached near Gurudatta . The person who was driving the motorcycle had alighted and caught hold of Gurudatta and thereafter the pillion driver had drawn a knife from his pocket and mounted brutal assault upon Gurudatta. He had also noticed that the person who was helping Gurudatta had also sustained some minor injuries. The people in the area were raising cries to save Gurudatta. The complainant had admitted Gurudatta in KEM Hospital. Gurudatta had succumbed to the injuries on the same day at about 5.45 p.m.

3. In the course of investigation, the applicant was arrested on 9.9.2015 and test identification parade was held. The applicant has been identified as the person who was driving the motorcycle. There is recovery of blood stained clothes from the applicant. There is ample evidence to indicate that the applicant had facilitated assault upon Gurudatta. The deceased had sustained as many as 11 wounds and abrasions. This would indicate that the incident of assault must have lasted for quite some time.

4. The learned counsel for the applicant submits that the only role attributed to the present applicant is that he was holding the deceased. However, he had not assaulted the deceased. The learned counsel has also made an attempt to demonstrate the lacunas in the test identification parade as well as the recovery conducted under Sec 27 of the Indian Evidence Act.

5. The learned APP rightly submits that all these aspects pertain to appreciation of evidence at the time of trial and need not be considered at this stage since assault upon Gurudatta was a brutal

attack. Perusal of the papers of investigation, it is clear that the present applicant had shared common intention with the co-accused and that is the precise reason why he had followed the deceased on the motorcycle. In view of the observations made hereinabove, this is not a fit case for grant of bail. The application being sans merit, stands rejected.

**(SMT.SADHANA S.JADHAV, J.)**