

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 764 OF 2015

Pratik Prakash More. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 714 OF 2015

Shekhar Ashanna Dasari. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. R.S. Dave, advocate for applicant in BA 764/14.

Mr. Rishi Bhuta, advocate for Applicant in BA 714/14.

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

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 27, 2015

P.C.:

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

2 The learned Counsel for the applicant upon instructions seeks liberty to withdraw the applications. Liberty as prayed for is granted in the interest of justice.

3 The respective Counsel have drawn the attention of this Court to the order passed by the Sessions Court in Criminal Application No. 506 of 2014, wherein one of the co-accused namely Raju Kshitiya Pantangi has been granted pre-arrest bail by the Sessions Court in the present case. It is pertinent to note that the incident is of 29th May, 2014, whereas the applicant has approached the Court of Sessions seeking pre-arrest bail in November, 2014. The learned Sessions Court has only considered that the post mortem notes were not placed on record although the incident is of May, 2014. The cause of death certificate shows that the deceased had died due to head injury. The learned Sessions Court being, oblivious of the fact that the accused are being prosecuted under Section 147, 148, 149 has distinguished the role of the accused and has come to a conclusion that the applicant therein had thrashed on the face of the deceased by bricks.

4 The post mortem notes reveal that the deceased was brutally assaulted to death. The learned Sessions Court ought not to have granted pre-arrest bail to the said accused. The learned APP upon instructions from the Investigating Officer who is present in the court makes a statement that the said order dated 7/1/2015 granting pre-arrest bail to the said accused has attained finality as it has not been challenged.

5 The respective Counsel submit that today they are praying for bail only on the ground of parity.

6 The learned Sessions Judge has also granted bail under Section 439 of the Code of Criminal Procedure, 1973 to two other accused by distinguishing their role. Column No. 17 of the post mortem notes would reveal that the deceased had sustained as many as 17 injuries all over body. The injury Nos. 1, 2 and 3 are on the head of the deceased. They are bone deep injuries. Column No. 19(ii) also shows that there was a fracture on right frontal bone depressed fracture

at the base of skull and the brain matter was lacerated and contused at places with sub dural bleeding. In fact, the Court ought not to have considered the role of the individual accused. However, this Court is of the opinion that by perpetuity an error cannot be validated and therefore, has declined to consider the relief to the present applicant by virtue of doctrine of parity.

7 This Court would not concur with the observations of the Sessions Court and hence, the Court was not inclined to grant bail. The Counsel seeks withdrawal of these applications. Hence, observations on merit need not be recorded.

8 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973 in Crime No. 182 of 2014 registered at Kasturba Marg Police Station. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the

basis of the substantive evidence adduced by the prosecution at the time of trial.

9 Both the applications are dismissed as withdrawn and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)