

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 960 OF 2015

Akash Manoj Patel. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Umar Kazi, advocate for Applicant.

Ms. Rutuja Ambekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 23, 2015

P.C.:

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

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 30/3/2014 in
Crime No. 69 of 2014 registered at Shivaji Nagar Police Station for
offence punishable under Section 302 of the Indian Penal Code.
Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 30th March, 2014 Gurunath Bhoir lodged a report at the police station alleging therein that on 29th March, 2014 at about 11.30 p.m. he received a phone call from an unknown person informing him that his son has met with an accident and is lying in an injured condition in Anandnagar M.I.D.C. Road near Jay Ambe Hotel. The caller had introduced himself as police and informed the complainant that he had called him on the basis of the documents, which were found on the person of his son Sagar Bhoir. The complainant has gone to the spot. He has seen his son lying in a pool of blood. The offence was registered against unknown person. In the course of investigation, the name of the applicant had surfaced.

4 The learned APP submits that there is a recovery of clothes of the accused at the instance of the present applicant and therefore, the applicant does not deserve grant of bail.

5 As against this, the learned Counsel for the applicant submits that the panchanama would show that the clothes were thrown in quarry, which was filled with water. The clothes were dried in the police station. On the next day, seizure panchanama is recorded. The learned Counsel submits that the recovery of the said clothes has been foisted upon the present applicant. That would not be a nexus between offence and offender and according to the learned Counsel for the applicant, there is no cogent, convincing, prima facie evidence to remotely indicate that the present applicant is involved in homicidal death of Sagar Bhoir.

6 The learned Counsel for the applicant has drawn attention of this Court to the order passed by the coordinate Bench (Coram : Revati Mohite Dere, J) dated 3rd March, 2015 granting bail to co-accused to Ashok Pandharinath Mahadik. This Court had considered criminal antecedents of the said applicant. There was evidence to show that the said applicant in Criminal BA 2309 of 2014 had made several calls to co-conspirator. However, the same was not

considered as sufficient evidence to deny him bail and hence, applicant herein claims bail by virtue of doctrine of parity.

7 Upon perusal of papers of investigation, it is clear that the case rests upon the circumstantial evidence. Besides recovery of clothes, there is no prima facie material which would warrant further incarceration of the applicant in jail. Moreover, the investigation is completed and charge-sheet is filed and the applicant has been in jail for more than one year. In view of these circumstances, the applicant deserves grant of bail.

8 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.

9 Hence, the 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/- and one or more sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on 1st Sunday of every month till conclusion of trial.
- (iv) After releasing on bail, the applicant shall furnish his recent addresses, cell phone numbers, landline numbers and the other details to the investigating officer.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)