

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 994 OF 2015

1 Jayesh Milind Pawar @ Bachhu.
2 Prakash Milind Pawar @ Papy. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Niranjan Mundargi i/b. Mr. Sudhir S. Pawar, advocate for Applicants.

Ms. Rutuja Ambekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 28, 2015

P.C.:

1 Heard the learned Counsel for the applicants 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 applicants herein are arrested on 21/11/2014 in Crime No. 255 of 2014 registered at Bangur Nagar Police Station initially under Section 307, 143, 144, 147, 148, 149 of the Indian

Penal Code. However, the applicants are charge-sheeted for offence punishable under Section 302 of the Indian Penal Code.

3 It is the case of the prosecution that on 3/11/2014 Smt. Suvarna More lodged a report at the police station alleging therein that on 2/11/2014 at about 9 p.m. she had spoken to her husband on the cell phone. After having dinner, her husband had left the house. Within 15 to 20 minutes after her husband left the house, some boys residing in the said locality informed her that there was a quarrel between her husband and other residents of locality and that he is lying in an injured condition. She was informed that her husband is lying in a pool of blood. She immediately called her sister-in-law i.e. her husband's sister Shanta Santosh Ithape and rushed to the spot. She saw, at the end of Rajaram Galli, that, her husband is lying unconscious in a pool of blood. Some stones were scattered around. She with the help of others had taken him in rickshaw to Sidharth Hospital. He was admitted in the hospital. She was informed about the poor prognosis of the patient, she was advised to take her

husband to K.E.M. Hospital. In the course of taking treatment, her husband had expired on 4/11/2014 at about 9.30 a.m.

4 She had enquired with the resident of the locality as to how the incident had occurred and she was informed that her husband had assaulted Kiran. Thereafter, there was a quarrel between her husband and the other residents of the locality. Her husband had assaulted Omprakash Saroj and Sandesh with a knife and in retaliation he was assaulted by the other residents of the locality.

5 It is pertinent to note that the first informant who happens to be the wife of the deceased has categorically stated that when she saw her husband, he was lying in an unconscious condition. However, in the course of investigation, the statement of the sister-in-law of the complainant has been recorded, in which she has stated that she had asked her brother about how the incident has taken place and he has disclosed the name of the present applicants and others.

6 Upon perusal of the statement of one of the witness, it appears that the whole quarrel was picked up by the deceased Mangesh. According to the eye witness at the time of the incident, the deceased was armed with a knife. He was threatening the people. He had mounted assault upon Omprakash Saroj, Kiran and Sandesh and thereafter, the injured had raised hue and cry and in defence, the people from the locality had gathered and assaulted the deceased Mangesh only to overpower him and deter him from causing injury to anybody else. It appears that he had been assaulted with fists and kick blows, bricks etc. The injuries mentioned in the post mortem notes appeared to be in the nature of contusions, abrasions and contused lacerated wound. There was a fracture of his 3rd to 7th ribs and that had caused extravasation of blood in surrounding muscles. The cause of death is shown as head injury contributed by multiple fractures and other injuries over body.

7 The learned Counsel for the applicant submits that the said act was not premeditated. The incident had occurred on the spur of the

moment after the deceased had mounted assaulted upon the people in the locality.

8 Upon perusal of the papers of the investigation, it appears that the applicant had picked up the cause for Omprakash Saroj, Kiran and Sandesh and they have been in jail for more than 8 months. In view of this, the applicant deserves to be enlarged on bail.

9 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. 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.

10 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or more sureties in the like amount.
- (iii) The applicants shall furnish their residential address where they are going to reside during the pendency of the trial, cell number, landline number and all other details, as required by the investigating agency and also inform the change, if any, to them.
- (iv) The applicants shall report to the concerned police station on 1st Sunday of every month till the conclusion of the trial.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)