

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1135 OF 2015

Kamlesh Bhimrao Devekar	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

Mr. Ganesh Gole a/w Ms. Megha Gawalani for the Applicant.
Mr. R.V. Chavan, P.S.I. Oshiwara Police Station.
Mr. Baburao Mukhedkar, Sr. P.I. Airport Police Station – Investigating Officer.
Ms. S.S. Kaushik, A.P.P. for the State.

CORAM :- SMT. SADHANA S. JADHAV, J.
DATED :- 14th JULY 2015.

P.C. :-

1 Heard. This is an application under Section 439 of Cr.P.C. Applicant herein is arrested on 2nd January 2014 in Crime No.1 of 2014 registered at Oshiwara police Station, Mumbai, for the offences punishable under Sections 324, 326, 302, 504 r/w. 34 of I.P.C.

2 The investigation is completed. Chargesheet is filed. Charge is framed in the month of August 2014. On the last occasion, it was mentioned that witness summons have been issued and the next date for recording of evidence would commence on 3rd July 2015 and therefore this Court had deferred the hearing of the application. Learned Counsel submits that on 3rd July 2015 the witnesses were not present and the matter is further scheduled on 21st July 2015. Learned Counsel for the applicant has drawn the attention of this Court to the order dated 29th October 2014. On that day, the learned

Counsel had withdrawn the application for the applicant Nos.1 and 2 i.e. the present applicant and one Kamlesh Devekar who is applicant in Criminal Application No.1770 of 2014.

3 It is the case of the prosecution that on 1.1.2014, Aurangzeb Anwar Shaikh lodged a report at the police station alleging therein that on 31.12.2013, he had accompanied his friends and had been to Lokhandwala Market for a ride. He returned to Tiwari Chawl, Shukla Compound, Jogeshwari. They all heard the noise of DJ Music. They were all dancing on the new Year's night. At that time, Abhishek More came on the spot along with his friends. They went to Rahat Nagar area. There applicant was standing along with his friends and they were quarreling with some boys. The applicant and his friends had presumed that Ronak who is the friend of the complainant belonged to rival group and, therefore, assaulted him with fists and kick blows. Vishal was being assaulted. The first informant, Abhishek More, Rohit and Saddam had asked the group as to why they had assaulted Ronak. At that juncture, Kamlesh had slapped the first informant. All of them mounted assault upon Rohit. He was being assaulted with fist and kick blows. At that juncture, applicant had assaulted the first informant with an iron rod. He had sustained bleeding injuries. Thereafter, it was noticed that Rohit had also sustained injuries. The friends had admitted the first informant and Rohit in the hospital. Rohit had succumbed to the injuries and hence the accused are being prosecuted for the offence punishable under Section 302 of IPC.

4 On 2.1.2014, the Investigating Officer had recorded the statement of Abhishek More, who happens to be an eye-witness to the incident. He has reiterated the allegations levelled by the first informant.

5 The learned counsel for the applicant has drawn attention of this Court to the post-mortem notes which shows that the deceased had consumed alcohol at the relevant time. He had not sustained injury by any weapon. The deceased had sustained abrasions all over the body. There was no fracture on Palpitation. There are two contusions on the head region and he sustained underscalp hematoma. The learned counsel submits that there was no premeditation. The incident has occurred on the spur of the moment. The allegation against the present applicant is that after Rohit had made the victim fall down, the applicant had sat on his chest and had assaulted him with fist and kick blows. It is pertinent to note that the cause of death is head injury. It cannot be said that the act of the applicant has been fatal and, therefore, the applicant deserves to be enlarged on bail. More so, accused Pramod and Vishal have been enlarged on bail. Hence the present applicant also deserves grant of bail.

6 The present applicant by virtue of doctrine of parity, deserves to be enlarged on bail. The other co-accused shall not claim parity.

7 The above observations are prima facie in nature. The same shall not be considered while deciding application for discharge or application for quashing of FIR or at the time of trial. The learned trial Court shall decide the matter uninfluenced by the observations made by this Court.

8 Hence, following order is passed.

Order

- I) The Application is allowed.
- II) The applicant be enlarged on bail on furnishing PR.
Bond in the sum of Rs.25,000/- and one or two sureties in the like amount.
- III) The applicant shall not reside in the jurisdiction of Oshiwara Police Station till the conclusion of the trial.
- IV) Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)