

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1174 OF 2015

Vikas Sakharam Auti.

...Applicant.

vs.,

State of Maharashtra.

...Respondent.

Mr. P.M. Khankar for the Applicant.

Ms.S.S.Kaushik, APP. for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 16 JULY 2015

PC:

Heard.

2) This is an application under Section 439 of the Cr. P .C. The applicant herein is arrested on 25.6.2013 in Crime No.76 of 2013 registered at NIR Sagari Police Station for offence punishable under Section 302, 120B read with 34 of the I.P.C. The investigation is completed and the charge sheet is filed. It is the case of the prosecution that on 24.6.2013 one Ashok Balasahib Choudhary lodged a report at the police station that on that day sister of the first informant received a phone call that their father has been attacked and assaulted. The deceased had discontinued the services of the applicant as there were several offences registered against him at various police station. There were also proceedings against him under Section 107 of the Cr. P.C. On

25.6.2013, the Investigating Officer has recorded the statement of one Vasant Hase who had disclosed that on 24.6.2013 at the market place he was having a dialogue with Balasahib Choudhary and when they were about to go to the present applicant he rushed towards Balasahib Choudhary and assaulted him. The witness was scared of the incident and had rushed home. Thereafter, the deceased was taken to the hospital. Soon after the incident the police had arrived at the spot. Post Mortem notes would show that deceased had sustained several stabbed wounds.

3) In the present case there are eye witnesses to the incident. There was no enmity between the eye witnesses and the applicant and therefore, there was no reason to falsely implicate the applicant. Learned Counsel for the applicant states that besides the statement of two eye witnesses there is no other evidence on record. In such case sterling testimony /statement of the solitary witness is sufficient to connect the accused with the offence which he had committed. The applicant had criminal antecedents and therefore, this court is not inclined to grant bail to the applicant.

4) Learned Counsel for the applicant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of Dharmendra Chandulal Patel vs. State of Gujrat reported in 2002 Cri.L.J. 943 wherein the accused was enlarged on bail by the Hon'ble Apex Court on the ground that the role attributed to the

applicant that he made an oral exhortation at the time of incident. The facts in the present case are different and cannot be applied to the facts of the present case.

5) The learned counsel has also placed reliance in the case of Sanghian Pandian Rajkumar vs. C.B.I. and others (2004) 12 SCC 23 23. In the said case the Hon'ble Apex Court had considered that the applicants who were in custody for 7 years without there being any progress in the trial. The Hon'ble Apex Court had taken into consideration the serious infirmities and voluminous documents. There were several impediments in transferring the matter from Gujarat to Mumbai and therefore the accused were in jail for nearly 7-years. In the present case, there is direct evidence against the present applicant. Learned APP apprehends that if the accused is enlarged on bail, the eye witness will be threatened and there will be tampering of evidence as there are antecedents against the accused. Hence, application stands rejected.

(SMT. SADHANA S. JADHAV, J.)