

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1449 OF 2015

Sanjay Kumar Bharati. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Amit Munde, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 12, 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 27/1/2015 in Crime No. 23 of 2015 registered at N.M. Joshi Marg Police Station for the offence punishable under Section 302 read with Section 34 of the

Indian Penal Code The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 26/1/2015 Smt. Shahaja Begam Shaikh lodged a report at the police station alleging therein that her husband runs a chicken shop. Her brother-in-law looks after the accounts of the shop. On 26/1/2015 at about 8.15 to 8.30 p.m. she had heard noise of some quarrel outside her house. The complainant came out and noticed that Choudhari who was residing in the same locality was arguing with Tahir i.e. her brother-in-law. The present applicant and one Damodar was accompanying Choudhary. They used to visit the shop quite often. Tahir had insisted upon them to pay the amount which was due towards them as they had purchased chicken on credit on the earlier occasion. At that time, there was an altercation and in the said altercation, the present applicant is alleged to have given fist blow on the chest of her husband. Thereafter, Chaoudhary had attempted to strangle him. The accused had attempted to flee from the spot. However, on

following them, Chaudhary was accosted on the spot. The applicant had succeeded in fleeing away.

4 The post mortem notes would reveal that the deceased had not sustained any injury as is reflected in Column No. 17. Column No. 17 of the post mortem notes would show that there is abrasion present over medial inner aspect of lower lip and abrasion on right side of face below lateral end of right eye. The cause of death has not been ascertained by the medical officers. The opinion is reserved.

5 It is pertinent to note that in this case although charge-sheet is filed, post mortem report do not form part of the charge-sheet. Section 207 of the Code of Criminal Procedure, 1973 reads thus:

“207. Supply to the accused of copy of police report and other documents.- In any case where the proceedings has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :-

- (i) the police report;
- (ii) the first information report recorded under section 154;

- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173;"

Although the duty is cast on the Magistrate, it goes without saying that the Magistrate would furnish only those documents which are submitted under Section 173 of the Code of Criminal Procedure, 1973. Not furnishing post mortem notes would cause serious prejudice to the accused.

6 Be that as it may, the first information report also shows that the applicant had given fist blows on the chest of the deceased. The incident had occurred on the spur of the moment without any

premeditation. The applicant was not armed with any weapons. In view of this, the applicant has made out a case for grant of bail.

7 The abovesaid observations are prima facie in nature and are restricted to decide the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The learned Trial Court shall decide the same on its own merits in accordance with law uninfluenced by the above observations.

8 Hence, 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/- with one or two sureties in the like amount.
- (iii) The applicant shall remain present on each and every date of trial.

(v) Upon being enlarged on bail, the applicant shall furnish his permanent address, landline number, cell phone number to the investigating officer.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)