

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1457 OF 2015

Jafar Ali Kadar Sayyed. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Ms. Naima Shaikh i/b. Mr. Khan Abdul Wahab, advocate for Applicant.

Ms. Rutuja Ambekar, APP for State.

Mr. C.V. Tendulkar, API, Ghatkopar Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 3, 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 13/3/2015 in Crime no. 94 of 2015 registered at Ghatkopar Police Station for

offence punishable under Section 307, 324, 143, 144, 147, 149 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 12/3/2015 Arif Adamali Shaikh lodged a report at the police station alleging therein that the present applicant happens to be in love with his sister. That the friends of the present applicant were residing just opposite the house of the complainant. The applicant used to visit the house of his friends quite often. One of his friend Imtiyaz had picked up a quarrel with the complainant. On 9/3/2015 in the afternoon Imtiyaz was having beer near the staircase when the complainant returned home. Imtiyaz had insulted the complainant as a bald person. There was an altercation. The present applicant had intervened in the said altercation to save his friend, in which Imtiyaz had threatened the present complainant with dire consequences. That they had assaulted the complainant and other with fists and kick blows. Imtiyaz had threatened the complainant that he would be eliminated. In the said

altercation, Imtiyaz had sustained certain injuries in the nature of abrasion.

4 It is pertinent to note that Imtiyaz had died a homicidal death on 12/3/2015 in the said altercation at the hands of members of the rival groups. The friends of the present applicant had also lodged FIR in respect of the said incident in the same police station on the basis of which Crime No. 93 of 2015 is registered.

5 The learned Counsel for the applicant rightly submits that initiation of criminal proceedings in C.R. No. 94 of 2015 is only in retaliation to registration of Crime No. 93 of 2015 for offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

6 Upon perusal of the injury certificates atleast prima facie, it cannot be said that the applicant has committed an offence

punishable under Section 307 of the Indian Penal Code. Hence, the applicant deserves to be enlarged on bail.

7 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.

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/- and one or two sureties in the like amount.

(iii) The applicant shall not reside within the jurisdiction of Ghatkopar Police Station for a period of 6 months from the date of his release.

(iv) The applicant shall furnish his residential address, where he is 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 applicant shall attend each and every scheduled date of the trial.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)