

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 2187 OF 2014

Vinod Jaywant Jadhav	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

Mr. Ganesh Gole i/b. Mr. Dhananjay V. Kendre, for the applicant.
Mr. S.S.Pednekar, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
ORDER RESERVED ON :25th February, 2015.
PRONOUNCED ON: 5th March, 2015.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 5.5.2014 in C.R. No. 70 of 2014 registered at Ozar Police Station, Dist. Nashik for offences punishable under Sections 302, 307, 341, 143, 147, 148, 324, 323, 504, 506 read with Section 149 of IPC. The investigation is completed and charge sheet is filed on 31.7.2014.

2. The applicant is serving as a Lower Division Clerk in Indian Armed Forces Civilian.

3. It is the case of the prosecution that one Balkrishna Hire was also serving in Air Force, rather in the same office as that of the applicant. That

Prakash Avhad and his family members had approached to the house of the complainant requesting them that their daughter Vaishali be married to Balkrishna. That the said proposal was rejected. Therefore, both the family of Hire and the family of the applicant was at loggerheads.

4. On 6.5.2014, Sachin Hire lodged a report at the police station contending therein that due to rejection of proposal of Vaishali, the relations between both the families were not cordial. That according to the complainant, in the month of March, Balkrishna was also threatened for not getting married to Vaishali. It appears from the recitals of the FIR that according to the complainant, Vaishali had also threatened Balkrishna that in the eventuality he refused to marry her, she would be exposed to social obloquy by levelling false allegations against him. The complainant has further alleged that on 5.5.2014, at about 10 p.m., he along with his brother Sunil were proceeding on their motorcycle towards their house. When they were passing from front of the house of Rekha Prakash Avhad, at about 11.30 p.m. suddenly, Santosh Jaywant Jadhav, Vinod Jadhav, Daulat Jadhav and others had obstructed their way. They had mounted assault upon him and his brother with the weapons with which they were armed. The grievance was the rejection of proposal of Vaishali for Balkrishna. He has ascribed the role to each of the accused. It is specifically

alleged that Santosh Jadhav had assaulted his brother Kedu on his head. That similarly Vinod i.e. the present applicant had assaulted with a sword. On the basis of the said statement, Crime No.70 of 2014 was registered. Kedu had succumbed to the injuries. Autopsy was conducted upon Kedu on 6.5.2014. Column No.17 of post-mortem notes reveal that deceased Kedu had sustained (1) CLW to occipital bone region, (2) fracture of occipital bone, (3) Hematoma of temporoparietal bone region, abrasions and contusions. Column No.19 also indicates that Kedu had sustained a fracture on his occipital bone.

5. The learned counsel for the applicant has rightly demonstrated that the allegations against the present applicant was that he had assaulted Kedu with a sword due to which he died. There is no incised wound which would remotely indicate that the present applicant had assaulted the deceased. There is no injury by the sword.

6. The learned APP submits that in fact , the offence is registered under Sections 143, 147, 148, 149 of IPC and therefore, it is not necessary to consider the role of each of the accused. That it is sufficient to consider the involvement of the accused at the time of offence.

7. In the present case, it appears from the records that the applicant was not on cordial terms with his own brothers. That on the same day, i.e. 26.3.2014, Rekha Avhad had also lodged a report against Balkrishna Hire alleging therein that he had abducted Vaishali.

8. The learned APP submits that the present applicant had filed Anticipatory Bail Application No.837 of 2014. That Justice Mridula Bhatkar had partly allowed the application. That the application filed by the present applicant was rejected. In fact, in the said application, the applicant herein had urged the plea of alibi on the date and time of the incident. However, the Court was not inclined to consider the same after looking into the facts of the case. By an order dated 11.7.2014, the application filed by the present applicant was rejected. However, the application as far as wife of the applicant was concerned, was allowed and disposed of. According to the learned APP, there is no change in circumstance. However, it is an admitted position that the said application was for seeking pre-arrest bail. Thereafter, the applicant was arrested and has been in custody for a considerable time.

9. The learned counsel for the applicant has also drawn attention of this Court to the complaint filed by the applicant against Santosh Jadhav. The learned

counsel submits that in fact, he is not on good relations with his brothers. That his brother Jaywant Jadhav had criminal antecedents. On 18.2.2013, the applicant herein had lodged a report against Santosh Jadhav and Gautam Jadhav on the basis of which N.C. No.74 of 2013 was registered. Similarly, he had filed an application to S.H.O. Police Station Ozar on 10.9.2010 alleging therein that he is a Defence Govt. employee and is residing in HAL accommodation provided by the Depot. At his behest, Crime No.227 of 2010 was registered at the police station on 5.9.2010 against his elder brother Santosh Jadhav since he was attacked violently by his brother Santosh. He had also stated that there was another complaint filed by him against Santosh Jadhav which was withdrawn due to the pressure of family members. He had also informed the police that his brothers are forcing him to sign the ancestral property documents in favour of his brother Santosh Jadhav. It was alleged that Santosh visits the house of the present applicant and raises quarrel with him. The applicant had prayed for suitable assistance for protection of his life and his wife. Similar application was filed on the earlier occasions also. The applicant had field the affidavits of several witnesses to show that at the time of incident he was elsewhere and not at the scene of offence. According to the learned counsel, since there is a dispute between him and his brothers, the complainant has falsely implicated him in the present case as he has implicated even fictitious persons as accused. That on

27.4.2013, the applicant had filed a complaint against the accused for the offence punishable under Sections 323, 504, 506 of IPC. The present case emanates from a cross complaint also. In fact, the applicant had also filed prosecution against Santosh Jadhav. The applicant has filed affidavits of several witnesses to show that at the time of offence, the applicant could not have been on the spot for participation in the said offence.

10. The learned counsel for the applicant submits that the applicant had not only filed applications showing therein that he was at some other place, but has maintained the said stand right from the inception. The learned counsel rightly submits that the complainant has named the present applicant in the FIR since the complaint is lodged against all the members of the family.

11. On 9.9.2010, the present applicant had made a representation to the Air-force Officer Commanding, Airforce Station, Ozar and had sought the protection of life on issues of even of ancestral property. He had threat perception from his own brothers. He had specifically stated that his brother is coercing him to sign agreement papers and had assaulted him on refusal to do so. He had lodged an FIR against his brother on the basis of which Crime No.227 of 2010 was registered. The applicant had also requested the authorities to allot him SMQ quarter as early as possible. The Second Commander had interviewed the applicant and recommended for taking up the case with the Legal Authorities. He

was granted out of turn approval. On 10.9.2010, he had complained to the Station House Officer, HAL Township, Ojhar and filed a complaint against Santosh Jadhav, Vinod Jadhav. He had prayed for protection. He had filed several cases against his own brothers. He had severed his relations with his brothers since 2010.

12. The learned counsel for the applicant rightly submits that the applicant had no reason to fight for the cause of his brothers. He had no enmity with the family of the complainant. It is further submitted that Rajendra Hire had filed an affidavit before the Court stating therein that on 5.5.2014, the applicant and his family were in the company of Rajendra Hire and that they were enjoying Anand Mela at about 9.45 p.m. in their colony. The said event was organized in the Stadium complex at HAL Township. That they were together till 11.30 p.m. Rajendra Hire happens to be a close family friend of the present applicant and that since the applicant had got an inter-caste marriage, his relations with the family members were not cordial. A similar affidavit is also filed by Harshal Korde.

13. The learned APP submits that in fact these affidavits were before the Court at the time of hearing of anticipatory bail application. The same were not considered and therefore the plea of alibi cannot be considered at this stage.

14. As against this, the learned counsel for the applicant submits that the

criteria for grant of pre-arrest bail and a bail under Section 439 have to be considered on different grounds. In the present case, although the applicant was not entitled for grant of pre-arrest bail, he would be entitled for grant of bail under Sec. 439 of Cr.P.C. since he has been in jail since 5.5.2014. The learned counsel has further stated that in the said incident, the applicant had not sustained any injury, whereas the other co-accused have sustained injuries. According to the learned counsel, this would be an indication to show that the present applicant had not participated in the said incident.

15. In view of the facts mentioned above, the applicant has made out a case for grant of bail.

16. The observations made hereinabove are prima facie in nature and the Sessions Court shall not be influenced by the same for the purpose of deciding application for quashing of FIR, discharge application or at the time of trial.

17. The co-accused shall not claim parity with the present applicant, specially since the co-accused have criminal antecedents. The applicant herein was working in the clerical staff in the Armed Forces. He has no criminal antecedents. He is a complainant in the cases lodged against the co-accused. In view of this, this Court is inclined to grant bail.

ORDER

The application is allowed. The applicant be enlarged on bail on

furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

Application is disposed of.

(SMT.SADHANA S.JADHAV, J.)