

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2138 OF 2015

Darshan Prabhakar Mhatre	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Ms. Tejasweeta V. Bhosale, Advocate for the applicant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 29th October, 2015.

P.C.

This is an application filed by the present applicant seeking bail. This Court (Coram: Smt. Sadhana S. Jadhav, J.) vide order dated 16.6.2015, had rejected the application filed by the applicant on merits. The earlier application filed by the applicant was withdrawn on 11.12.2014.

2. The learned counsel for the applicant submits that today the applicant is seeking bail on the ground of parity. This Court had observed that the irregularities in conducting the test identification parade was argued at the first instance on 11.12.2014 and the learned counsel for the applicant had withdrawn the application upon instructions. The same issue was

considered in subsequent application i.e. Bail Application No.185 of 2015. On 16.6.2015, this Court had observed that test identification parade or the identity of the accused is not the only incriminating circumstance mainly because the case rest upon circumstantial evidence. At the stage of bail, the Court cannot go into the niceties of investigation. In a catena of decisions, the Hon'ble Apex Court has held that the lapses on the part of the investigating agency shall, in all circumstances and in all cases, not be to the benefit of the accused. In any case, the test identification parade would be a corroborative piece of evidence. Identification before the Court would be a substantive piece of evidence and, therefore, that cannot be considered as the only ground for granting bail to the accused. Moreover, this Court cannot be oblivious of the fact that the applicants are being prosecuted for an offence punishable under Sections 307, 302, 452, 323 and 120B read with Section 34 of Indian Penal Code. This Court is of the opinion that the Court should be consistent with its own view.

3. The learned counsel for the applicant submits that the case of the present applicant is on a better footing than the case of accused Laxman Sannaki and Vikram Salunke. This Court had observed that Jitendra Shankulkar and Sapte had identified the present applicant, whereas Vikram

Salunke was neither named nor identified in the identification parade. In view of this, this Court is of the opinion that there is no change in circumstances for considering the prayer for bail. Hence, the application seeking bail on the third occasion stands rejected.

Application stands rejected.

(SMT.SADHANA S.JADHAV, J.)