

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2454 OF 2014

Vishal @ Mithya Ajinath Jadhav. ... Applicant.  
Versus  
The State of Maharashtra. ... Respondent.

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Mr. S.R. Chitnis, Sr. Advocate a/w. Mr. Debajyoti Talukdar, advocate  
for Applicant.

Mr. S.S. Pednekar, APP for State.

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**CORAM : SMT.SADHANA S. JADHAV,J**  
**DATE : JANUARY 19, 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 in Crime No. 112  
of 2013 registered at Marketyard Police Station, Pune for offence  
punishable under Section 302 read with Section 34 of the Indian  
Penal Code. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 5/12/2013 one Babasaheb Khandagale lodged a report at the police station alleging therein that on 5/12/2013 his son Kunal had left house for having tea. The complainant had learnt that his son had been assaulted by Mangesh Taware, Shakil @ Bhaiya Shaikh, Sagar Anant Kamate, Vishal @ Mithya Ajinath Jadhav and one unknown person. The injured was taken to hospital. The injured in all probabilities was not in a state to disclose the names of his assailants. The investigating Officer recorded statement of one Sanjay Suresh Gaikwad who had disclosed that the present applicant had accompanied Sagar Kamate and others and had assaulted Kunal with stick on various parts of his body. Kunal was taken to one hospital to another. However, he succumbed to the said injuries on 9/12/2013 while he was taking treatment in Jahangir Hospital. The applicant herein was arrested on 6/12/2013.

4     The learned Senior Counsel appearing for the applicant submits that the recitals of the FIR would show that the names of the applicant does not appear in the statement of the complainant. However, his name finds place in the list of accused in column No. 7 of the proforma under Section 154 of the Code of Criminal Procedure, 1973. Therefore, according to the learned Senior Counsel, the applicant had been falsely implicated.

5     Upon perusal of the papers of investigation, it appears that the complainant had not given the name of the present applicant, but had referred to one unknown person. The statement of eye witness was recorded on 6/12/2013 i.e. prior to registration of the offence and filling in the form under Section 154 of the Code of Criminal Procedure, 1973 and therefore, the name of the applicant appears in the proforma under Section 154 of the Code of Criminal Procedure, 1973. Hence the submission that the applicant is falsely implicated would hold no ground.

6     Learned Senior Counsel submits that the co-accused Sagar Kamate, to whom similar act has been attributed, has been enlarged on bail by this Court (Coram : A.M. Thipsay, J) vide order dated 28/7/2014. Learned Senior Counsel submits that the predecessor Court (Coram : A.M. Thipsay, J) had observed that medical officer who had conducted autopsy has not given any opinion about the cause of death nor the report of histo-pathological examination had been received. At that stage, it was submitted before the predecessor bench that all the injuries were caused on non-vital parts of the body i.e. on the limb and therefore, it cannot be said that accused had any intention or knowledge that the injured would succumb to death.

7     Upon perusal of the post-mortem notes, it appears that the injured had sustained external injuries in the nature of swelling all over the body. There were contusions and abrasions on the body. However, injury No. 10 is “scrotum swollen, on dissection haematoma present over both testis, reddish”. It prima facie appears that the injured had sustained neurogenic shock due to the said

injury. Therefore this Court is not inclined to wait for the histopathological report.

8 The fact that the co-accused, to whom similar act has been attributed, has been enlarged on bail by this Court. The applicant also prays for bail on the ground of parity.

9 Prima facie it appears that the accused persons had battered the injured to death. Intention and the knowledge can be gathered at the time of recording of substantive evidence. However, as on today, by virtue of doctrine of parity, the applicant deserves grant of bail.

10 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding application for quashing of FIR or for discharge or at the time of trial.

11 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.50,000/- and one surety in like amount, or two sureties in the sum of Rs. 25,000/- each.
- (iii) The applicant shall report to the Marketyard Police Station on every Monday, Wednesday and Friday between 6 p.m. to 8 p.m. till the conclusion of the trial.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)