

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2590 OF 2014

Naresh Gokul Sonawane. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Shekhar A. Ingawale, advocate for Applicant.

Mr. D.P. Adsule, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 21, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the Learned APP for State. Perused the papers. Learned APP submits that inspite of sending messages, the Investigating Officer is not present and the investigating agency is not cooperating with the prosecution.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 13/11/2014 in Crime No. 176 of 2014 registered at Rajarampuri Police Station, Kolhapur initially for offence punishable under Section 307, 324, 427

read with Section 34 of the Indian Penal Code. However, subsequently Section 307, 326 of the Indian Penal Code has been added.

3 It is the case of the prosecution that on 11/9/2014 jailor of Kalamba Jail, Kolhapur lodged a report at the police station alleging therein that on 10/9/2014 when he was proceeding on the road and crossing through Shende Park Chowk. He was assaulted by 2 to 3 unknown persons from behind. He has sustained injuries. He had driven home by his swift motor car and thereafter was admitted in hospital. He has not expressed suspicion against any particular person, but has disclosed that in all probabilities some inmates of the jail being enraged with his conduct must have assaulted him while they were on parole and furlough. Three persons were arrested.

4 The applicant had apprehended his arrest on the basis of the statement of the co-accused and therefore, he had filed an application under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail. The applicant was granted interim pre-arrest bail vide

order dated 13th October, 2014. The applicant had complied with the conditions imposed upon by this Court and had attended police station. However, this Hon'ble Court vide order dated 10/11/2014 had rejected the application under Section 438 of the Code of Criminal Procedure, 1973. Hence the applicant surrendered before the police on 13/11/2014 and is in jail since then.

5 By an order dated 1/10/2014 the Ad-hoc Additional Sessions Judge, Kolhapur has enlarged the co-accused on bail considering that there was no substantial material against the applicant and the prosecution could not substantiate their contention for further incarceration.

6 The applicant had then filed an application seeking bail under Section 439 of the Code of Criminal Procedure, 1973. The learned Additional Sessions Judge has rejected the application mainly on the ground that the applicant was absconding for a considerable period of time and that he does not deserve to be released till the completion of investigation.

7 It is pertinent to note that in fact, the applicant was not absconding but his application seeking pre-arrest bail was pending before the Sessions Court and the High Court. He had attended the police station in the intervening period. After rejection of the anticipatory bail application on 10/11/2014, he surrendered before the police on 13/11/2014. Hence, it cannot be said that he was absconding.

8 As far as contention of false implication is concerned, the learned Counsel has placed on record a report showing that the present applicant had refused to stand surety to one of the friend of the co-accused namely Jagdish Khot on 1/9/2014. The learned Counsel submits that the co-accused had named him while in custody only to satisfy his personal vendetta.

9 Be that as it may, since co-accused are enlarged on bail and that the applicant does not have any criminal antecedents, this Court is inclined to grant bail.

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

11 Hence, the 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.15,000/- and one or two sureties in the like amount.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)