

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 2673 OF 2014

Rahul Dilip Kunjir	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

Mr. Rajiv Patil, Senior Advocate a/w Mr. Prashant Patil, Advocate, for the applicant
Mr. A.S. Shitole, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 19th January, 2015.

P.C.

Heard the learned Senior Counsel.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 16.6.2014 in Crime No.161 of 2013 registered at Loni Kalbhor Police Station for the offences punishable under Sections 302, 341, 323, 504 and 506 of Indian Penal Code. The investigation is completed and charge sheet is filed on 15.9.2014.

3. It is the case of prosecution that on 28.4.2014, Amol Annda Kalel lodged a report at the police station alleging therein that his brother Shankar Ananda Kalel is a driver on the tanker of Mahavir Gaikwad. One Laxman Shinde is working as cleaner on the said tanker. The tanker was being

maintained by the present applicant some 10 days prior to 28.4.2014. On 25.4.2014, Shankar Ananda Kalel had been to HPCL Co. to fill diesel in the said tanker. Laxman Shind was the cleaner at that time. On 26.4.2014, Shankar had disclosed to the present applicant had asked him to take the tanker to Theur Phata. The applicant happens to be the resident of Theur Phata. That the applicant had drawn 20 litres of petrol and 20 liters of diesel from the said tanker. That Shankar had proceeded to Wai thereafter. Shankar had disclosed to the Manager on the phone that the applicant had withdrawn diesel and petrol from the tanker clandestinely. It is alleged that the applicant herein was annoyed with Shankar as he had disclosed about his activities by drawing the diesel and petrol from the tanker. Shankar had not returned home at that time. The complainant had been to Kunjiwadi to look out for his brother. At that time, he had seen the present applicant assaulting Shankar with an iron pipe and with kicks. The applicant was annoyed because Shankar had disclosed about his activities. Thereafter, the complainant had taken his brother Shankar to his house. The complainant had taken Shankar to the hospital. However, since he did not have sufficient funds to pay for the treatment, he had brought Shankar back home. They had informed Rahul that Shankar is required to be referred for treatment. He had agreed to pay him, but had requested the complainant not to disclose his name and on that condition he had made available the funds for medical treatment

of Shankar. It appears that the applicant had paid Rs.60,000/- for the treatment of Shankar. He was taken to different hospitals. However, he had succumbed to the injuries on 28.4.2014.

4. Upon perusal of the papers of investigation and the medical case papers, it prima facie appears that Shankar had not sustained any external injury. However, there was perforation of the internal organs.

5. The learned counsel for the applicant has drawn attention of this Court to the statement given by the complainant before the Nobel Hospital, Pune. The complainant had disclosed that the incident had occurred due to a quarrel. He had given the history of assault by unknown person by using iron rods at about 5 p.m.

6. The learned APP submits that due to financial stringency, the complainant could not afford medical treatment to his brother. That the complainant was hopeful that the injured would survive and, therefore, he had constrained to not disclose the name of the present applicant. It is a matter of record that the injured had sustained blunt trauma on abdomen. There was perforation of deodenun. Patient had undergone explorative laprotomy. Despite aggressive management, the patient had become serious and died.

7. It is true that the evidence is in the nature of eye-witness. It is a

direct evidence. The applicant had rather been enraged by the disclosure of his activities, assaulted the injured. At this stage, it cannot be said that the applicant had knowledge that the injured would succumb to the death by the said injury.

8. Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicant has made out a prima facie case for grant of bail. However, the observations herein are prima facie in nature and the learned Sessions Judge shall not be influenced by the same at the time of trial.

ORDER

(i) 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.

(ii) The applicant shall report to the concerned Police Station on Sunday of every month till conclusion of the trial.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)