

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1273 OF 2016

Dutta @ Yogesh Bapu Kamble

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Debajyoti Talukdar Advocate for Applicant.
Ms. Veera Shinde APP for the State.
Mr. S. N. Dhavade, P.S.I. Vatje Police Station,
Pune.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 24th NOVEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 30/12/2013 in crime no. 321 of 2013 registered at Warje Malwadi Police Station, Pune for offence punishable under section 302 r/w 34 of the Indian Penal Code. Investigation is completed. Charge-sheet is filed. The learned APP upon instructions submits that the case is committed to the court of Sessions, registered as Sessions Case No. 253 of 2014.

2) It is the case of the prosecution that on 28/12/2013, Ramdas Dalvi

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lodged a report at the police station that on that day at about 8.00 p.m., he had received a telephonic message that there was a quarrel between his son Sonya @ Suraj and some other boys and that Suraj is admitted in Mangeshkar Hospital. He rushed to the hospital. There he learnt that his son was assaulted by Nilesh Gaikwad, Akshay Khavale, **Datta Gaikwad**, Bhurya @ Suraj Manik Kale on the ground that in the past there was a quarrel between Suraj & Nilesh Gaikwad. All the accused were arrested on 30/12/2013 at 10.00 p.m. The present applicant was arrested on the ground that he is Datta Gaikwad who has been referred in the F.I.R.

3) At this stage, the learned counsel for the applicant has contended two grounds. Firstly that it is a mistaken identity and secondly that the co-accused are enlarged on bail and therefore, by virtue of doctrine of parity, applicant deserves to be enlarged on bail.

4) As far as the first ground is concerned, according to the learned counsel for the applicant, the police could not trace Datta Gaikwad and therefore, they have arrested the present applicant whose name is Yogesh Kamble and have shown him as Datta Gaikwad. It is further submitted that prosecution/investigation at the stage of filing the charge-sheet has not been

able to establish the identity of the present applicant as the person who was referred as Datta Gaikwad in the F.I.R. It is also submitted that there is no test identification parade and therefore, the identity of the present applicant has not been established.

5) The learned APP has rightly submitted that when the accused was produced before the Magistrate after being arrested or at the time of being sent to Judicial custody or at the time of filing of the charge-sheet, applicant has never claimed that he is not the person Datta Gaikwad and his name is Yogesh Kamble. The learned APP rightly submits that even at the time of framing of charge, there is no such contention raised before the court and therefore, after three years of the alleged incident, when the trial has almost commenced, it would not be proper to appreciate the ground of mistaken identity.

6) As far as the ground of parity is concerned, the learned counsel for the applicant submits that all the co-accused are enlarged on bail and therefore, by virtue of doctrine of parity, applicant deserves to be enlarged on bail.

7) It is seen from the record that accused Nilesh Gaikwad is a juvenile in conflict with Law and is therefore at large. The learned APP submits that

subsequently Nilesh Gaikwad has been arrested in crime no. 376 of 2014 registered at Warje Malwadi Police Station, Pune Police Station for having assaulted witness Kishor and is in custody. As far as the other accused Prashant Waghmare is concerned, he has been enlarged on bail on 03/07/2015 by this Court (Coram: Mrs. Mridula Bhatkar, J.) In the said order it is specifically submitted that the deceased Suraj was assaulted by Datta Kamble and Nilesh Gaikwad and therefore, the accused Prashant was enlarged on bail. On the basis of the order dated 03/07/2015, accused Akshay Khavale was enlarged on bail by the Sessions Court Pune vide order dated 20/06/2016.

8) At this stage, after the trial has commenced, both the contentions cannot be taken into consideration and hence, application being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)