

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 98 OF 2016

Santosh Dinkar Lohar @ Nagadi. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Arun Rajpur a/w. Ms. Anjali Patil, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

Mr. D.R. Ganore, P.I., Khar Police Station, Mumbai.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 12, 2016

P.C.:

1 Heard the learned Counsel for the applicant and learned APP
for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973 seeking enlargement on bail. The applicant herein is
arrested on 26/11/2013 in Crime No. 275 of 2013 registered at
Meghwadi Police Station, for offence punishable under Section 141,

142, 143, 144, 147, 148, 302 read with Section 149, 307, 323, 504 of the Indian Penal Code and Section 4 read with Section 25 of the Indian Arms Act.

3 After filing of the charge-sheet, the applicant herein had filed Criminal Bail Application No. 265 of 2015 on 17/6/2015. The matter was argued before this Court (Coram : Smt. Sadhana S. Jadhav, J). The learned Counsel for the applicant upon instructions has sought liberty to withdraw the application. The liberty as prayed for was granted in the interest of justice. However, the learned Sessions Judge seized with the Sessions Case No. 68 of 2014 was requested to make an endeavour to conclude the recording of evidence in the said within 6 months from the date of framing of charge.

4 Learned APP upon instructions submits that till today the charge has not been framed.

5 This is a subsequent application filed by the applicant seeking enlargement on bail on two grounds. Firstly that, the statements recorded by the police in the course of investigation do not attribute any overt act to the applicant and instead, there is contrary material on record, which would indicate that after the incident, the applicant herein had carried the injured to the hospital in his Maruti Van. It is fairly submitted by the learned Counsel that when the matter was argued on 17/6/2015, the learned Advocate had not drawn attention of this Court to the compilation of the charge-sheet. It goes without saying that in the first information report, specific overt act is attributed to the applicant. Upon going through the first information report, this Court was not inclined to allow the application and hence, the learned Counsel had withdrawn the application.

6 Secondly, on the ground that although the trial was expedited, till today charge has not been framed and the applicant continues to be in custody since 26/11/2013.

7 The learned Counsel for the applicant has drawn attention of this Court to the panchanama dated 17/10/2013. The said panchanama pertains to recovery of Maruti Van in which the applicant had take Vinod Namdeo Sawant to the hospital.

8 In fact, in the first information report, specific overt act was attributed to the applicant by the first informant and yet on 17/10/2013 i.e. 2 days after registration of the crime, the applicant was not taken into custody. His Maruti van was seized and he was let free. As on today, the prosecution has no answer as to why he was not arrested on 17/10/2013 although specific overt act was attributed to him. It is pertinent to note that eye witness Sandeep Raghunath Pawar has specifically stated that soon after the incident, the applicant was called and was requested to take injured to the hospital. Similarly, witness Vinod Kharua has specifically stated that Manoj Poojari has assaulted Vijay Yadav. At that time, Ajay Yadav had informed Vinod Sawant that Santosh happens to be a friend of

Sudeep. He has also stated that after the incident the applicant has taken the injured to the hospital.

9 The learned APP submits that there are call details record which could show that the present applicant was in contact with Sudeep Yadav at the time of the incident. Therefore, according to the learned APP, the applicant happens to be a part of the said conspiracy. The learned APP has drawn attention of this Court to the application filed by the applicant on 8/11/2013, wherein he has stated that his cell phone was missing. The investigating agency has recorded the statement of the applicant as a witness on 17/10/2013. At the time of the arrest of the present applicant, a certificate was found in his pocket which shows that he had filed an application with the police station on 8/11/2013 that his cell phone has been missing. On the basis of the said certificate, the investigating agency had tried to trace the call record between the principal accused Sudeep Yadav and the present applicant. In fact, it is a matter of record and on the basis of the statement of the witnesses, it is clear that Sudeep Yadav happens

to be friend of the applicant and the said fact has not been denied by the applicant in his statement which was recorded on 17/10/2013. The said aspect is also corroborated by other witnesses living in the same area.

10 It is true that till today, charge has not been framed. **Prima facie**, it appears that there is no convincing material as on today to further detain the applicant in custody and hence, he deserves to be enlarged on bail. However, it is made clear that the co-accused shall not claim parity with the present applicant in any manner and their application seeking enlargement on bail shall be considered on its own merits.

11 In view of this 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. 25,000/- and one or more sureties in the like amount.

- (iii) The applicant shall not tamper with the evidence.
- (iv) The applicant shall not visit or stay in Sanjay Gandhi Nagar at least till conclusion of the trial.
- (v) At the time of being enlargement on bail, the applicant shall furnish his residential address as well as his contact numbers such cell phone numbers, landline numbers etc. to the concerned Court.
- (vi) The applicant shall attend all the dates before the Sessions Court. Upon failure to attend any two consecutive dates, learned Sessions Judge shall issue non-bail warrant against the applicant and seek his presence.

12 The Application is disposed of on the above terms.

The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)