

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 141 OF 2016

Prakash Hiranman Avhad	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Abhishek Yende, Advocate for the applicant.
Ms. A.A. Mane, APP, for the State.

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 16th June, 2016.

P.C.

Heard the learned counsel for the applicant.

2. This is a subsequent application under Section 439 of Cr.P.C. The applicant is seeking enlargement on bail in Crime No.70 of 2014 registered at Ozar Police Station, Nashik against the applicant and others for the offences punishable under Sections 302, 307, 341, 324, 323, 504, 506, 147, 148, 149 of Indian Penal Code and Section 37(1)(3) read with section 135 of the Maharashtra Police Act.

3. It is true that on the earlier occasion, the present applicant had filed Criminal Bail Application No.2234 of 2014. The learned counsel for the applicant, at that stage, had prayed for liberty to withdraw the

application and liberty was granted. This Court had requested the learned Sessions Court seized with Sessions Case No.61 of 2014 to make an endeavour to expedite the trial, as far as possible and conclude the recording of substantive evidence within ten months from the date of framing of charge.

4. The learned counsel for the applicant submits that till today, charge has not been framed. Therefore, the applicant is seeking bail.

5. The learned counsel for the applicant has drawn attention of this Court to the recitals of the FIR. The first information report was filed by the brother of the deceased, who happens to be an eye-witness. It is specifically contended that on 5.5.2014, at about 10 p.m. when the first informant and his brother were proceeding towards their house. On the way, they were crossing the house of the present applicant and at that juncture, the present applicant and 9 others had mounted assault upon the brother of the complainant. It is alleged that the accused had mounted assault with swords, wooden logs and sticks. The dispute between the parties was that the brother of the informant was not desirous of marrying Vaishali who happens to be daughter of the present applicant. It is alleged that the

present applicant had assaulted the deceased with wooden log on his leg. The learned counsel submits that the post-mortem notes would indicate that the cause of death is haemorrhagic shock due to fracture of the occipital bone. It is also submitted that column No.17 of the Post-mortem notes would show that there is no injury on the legs. According to the learned counsel, the applicant has not been attributed with the fatal blow upon the deceased. It is also submitted that the present applicant was in fact not present but has been falsely implicated.

6. The learned counsel for the applicant, upon instructions, submits that charge is not framed.

7. The learned APP submits that apart from the first information report, all the eye-witnesses have categorically attributed an overt act to the applicant. The offence is registered under Sections 302 read with Sections 141, 143, 147, 148 and 140 f IPC. It can be said that the common object of the unlawful assembly was to assault the deceased. The death is consequence of the cumulative act f the injuries sustained by the deceased.. At this stage, it cannot be said that the applicant has been falsely implicated. In view of this, the application being sans merit, deserves to be rejected.

8. The observations made hereinabove are prima facie in nature. The learned Sessions Judge shall not be influenced by the observations made by this Court at the time of trial.

(SMT.SADHANA S.JADHAV, J.)