

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 541 OF 2016

Irphan Raju Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ankit Rajput i/b Mr. V. N. Bilimoria Advocate for Applicant.

Ms. Veera Shinde APP for the State.

Mr. Ramesh Chopade, So Po, Phaltan Police
Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 22, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested in crime no. 247 of 2015 registered at Phaltan City Police Station on 15/12/2015. Investigation is completed and the applicant has been charge-sheeted for offence punishable under sections, 302, 307, 387, 143, 147, 148 & 149 of the Indian Penal Code.

2) The learned APP, at the threshold, had pointed out that the application seeking relief under section 439 of the Code of Criminal Procedure, 1973 was rejected by the Sessions Court prior to filing of the charge-sheet. It appears

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that the learned counsel for the Applicant does not have the compilation of the charge-sheet and it is submitted across the bar that it would not be necessary to go through the charge-sheet as the recitals of the F.I.R. are writ large on the face of the record which would not indicate any involvement of the present Applicant and therefore, the learned counsel for the Applicant, on the basis of the recitals in the F.I.R., has submitted that the Applicant deserves to be enlarged on bail.

3) The learned APP submits that the deceased Jyotiram Chavan was the owner of the hotel Sairaj which is situated in his close proximity of the petrol pump where the applicant is working.

4) The learned counsel for the Applicant submit that there is no *iota* of evidence against the Applicant and that the F.I.R. is lodged by an eye witness who was also attacked in the said incident.

5) The learned APP has filed an affidavit which clearly indicates that 15 days prior to the incident, the accused had threatened the deceased with dire consequences, asking him to withdraw the cases filed against Swapnil Kakade & Bunty Kakade and others under section 307 of the Indian Penal Code. Affidavit also shows that the present Applicant was using mobile handset, the

number of which is 7387217717 and 9730756307. The cellphone number of original accused no. 2 Bunty Kakade is 8600181055. In the course of the investigation, the Investigating Officer had called for call detail records of both the cellphones and it was revealed that on the date of the incident, i.e. 15/12/2015, there was telephonic communication between the present Applicant and accused no. 2 during the period 5.45 a.m. to 7.33 a.m. and the incident has occurred at 7.30 a.m. The affidavit further shows that it was the present Applicant who had given the information to the principal accused about the location of the deceased. It is not the case of the Applicant that he was not acquainted with the accused persons. The hotel is situated in close proximity of the petrol pump. The involvement of the Applicant is writ large. It appears that the Applicant has acted as an informer and stand a party to conspiracy hatched by the accused to eliminate the deceased Jyotiram Chavan.

6) In view of the above observations, Application being sans merits, deserves to be rejected. It is made clear that the observations made herein above are restricted to the consideration of the present application under Section 439 of the Code of Criminal Procedure, 1973 and the learned

Sessions Judge seized with the matter shall not be influenced by the said observations.

7) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)