

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL BAIL APPLICATION NO. 737 OF 2016**

|                            |     |                 |
|----------------------------|-----|-----------------|
| Mr. Aman Abdul Gani Shaikh | ... | Applicant       |
| vs.                        |     | (Orig. Accused) |
| State of Maharashtra       | ..  | Respondent      |

Mr. A.P.Mundargi, Senior Counsel i/b. Mr. Mangesh M. Deshmukh,  
Advocate, for the applicant.

Mr. S.H. Yadav, APP, for the State.

Mr. Bapu Pingale, API, Singhad Road Police Station, Pune City present.

**CORAM: SMT.SADHANA S.JADHAV,J.**

**DATE : 30th August, 2016.**

**P.C.**

1. Heard. This is an application under Section 439 of Cr.P.C.  
The applicant herein is arrested on 4.7.2015 in Crime No.246 of 2015  
registered at Singhad Road Police Station for the offences punishable under  
Sections 436, 452, 447 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 28.6.2015, at about 3  
a.m. to 4.30 a.m., some two-wheelers and four-wheeler vehicles, including  
bicycles parked in the parking area of Surya Nagari Building, Swami  
Narayan Apartment, Akshay Glory Apartment, Avdhut Arcade and Ram  
Heights were set on fire. The complainant had informed the police station

about the said incident and on the basis of his report, offence was registered against unknown persons. In the course of investigation, the police had taken the images from the CCTV footage of the said premises. The accused was arrested on suspicion since he had been prosecuted for similar offences in the past. In the course of investigation, the I.O. had also filed an application seeking the polygraph, brain mapping and other scientific tests to be conducted upon the applicant. However, the said application was rejected.

3. On 29.9.2015, the investigation was completed and charge sheet was filed. As on today, the case of the prosecution is that they had recorded the supplementary statement of Prashant Laxman Badhe i.e. the first informant on 5.7.2015 i.e. on the next date of the arrest of the present applicant. The complainant was called to Singhad Road Police Station and was made to identify the accused on the basis of the CCTV footage which indicated the image of one unknown person. The complainant had then disclosed that on the basis of the manner of walking, the body constitution, hair style and the manner of dressing, it appears that the personality of the present applicant is similar to the image of the person who was captured in the CCTV footage.

4. In fact, the practice of calling a witness to the police station and making him identify the accused is deprecated by the Hon'ble Apex Court. Moreover, similarity in two personalities cannot be ruled out.

5. The learned Senior Counsel has fairly submitted that the present applicant was prosecuted as a juvenile in conflict with law in Sessions Case No.85 of 2008. He was charged with the offence punishable under Sections 435 and 436 of IPC. By a judgment and order dated 20.10.2011, the applicant was acquitted. The judgment is also placed on record. Upon perusal of the judgment, it appears that it was a case of 'no evidence'. It was necessary for this Court to look into the judgment in Sessions Case No.85 of 2008 for the simple reason that the prosecution insisted that due to criminal antecedents, the applicant does not deserve to be enlarged on bail. In fact, it appears that the personality of the accused-applicant was damaged in an adolescent stage as at that time also he was arrested only on suspicion as is revealed from the judgment. The learned Senior Counsel submits that the ordeal of prosecution had an impact upon the tender mind upon the tender mind of the applicant, but by no stretch of imagination it can be said that he had lost his mental stability. But

whenever such incidents occurred, it was presumed by the police that the applicant would be responsible and hence he is being prosecuted. It is submitted that the applicant is running a gift shop and is a responsible citizen.

6. The learned Senior Counsel rightly submits that even after the applicant was arrested on 4.7.2015 and was in custody, similar incidents had taken place in and around the same area, and that too, at about the same time. He has placed before this Court the news item published in “Sakal” dated 17<sup>th</sup> December, 2015 in which it was reported that several two-wheelers were set on fire in the early hours. The news item dated 31.12.2015 also shows that one Ajay Vijay Dighe was arrested for the offence punishable under Section 465, etc. for setting fire to the two-wheelers in Ramesh Society at about 3 a.m. The news item dated 29.1.2016 also shows that 4 two-wheelers were set ablaze in Janta Vasathi. The news item dated 6.2.2016 shows that Shubhangi was arrested for setting two-wheelers on fire. The news item dated 25.2.2016 also shows that 3 two-wheelers were set on fire. The news item dated 3.3.2016, shows similar incident had occurred at Dhankavdi, one Sameer Khedkar was arrested on suspicion. The news item dated 26.3.2016 indicates that similar incident had occurred. The news item dated 30.3.2016 also shows

similar incident had occurred at Katras. The news item dated 8.4.2016 also indicates that a similar incident had occurred. The report dated 19.4.2016 showed that the people responsible for setting two-wheelers on fire are still at large and the police is not taking effective action. The news item dated 23.4.2016 shows a similar incident had occurred and such incidents are still vogue.

7. The learned Senior Counsel rightly submits that in the eventuality that the applicant was instrumental in setting two-wheelers and four-wheelers on fire, the said activities would come to a standstill after his arrest. As on today, there does not appear to be sufficient material either to hold that further incarceration of the applicant is warranted or that there is cogent and convincing material against the applicant in the compilation of the charge-sheet, which would inspire the confidence of the Court to the extent that the applicant is a habitual offender and while on bail, may commit similar offences again.

8. The observations made hereinabove are prima facie in nature and the Sessions Court shall not be influenced by the same at the time of considering the application for quashing of FIR, discharge application or at the time of trial.

**ORDER**

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on every Sunday between 10 a.m. to 12 noon till the charges are framed.

The Application stands disposed of.

**(SMT.SADHANA S.JADHAV, J.)**