

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 779 OF 2016

Darshan Prabhakar Mhatre. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Vinay J. Bhanushali, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 15, 2016**

P.C.:

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

2 This is the fourth subsequent application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 12/3/2014 in Crime No. 42 of 2014 registered at Meghwadi Police Station initially for offence punishable under Section 307, 452, 323 read with section 34 of the Indian Penal Code. The investigation is completed and the applicant has been charge-

sheeted for an offence punishable under section 302 of the Indian Penal Code.

3 The complainant-Chetan Sapte who happens to be the employee of Rajesh @ Raju Arshid lodged a report at the police station that four persons had come to the shop, they had called the employer Rajesh Arshid outside the shop. His employer Rajesh Arshid had refused to oblige. Thereafter, two persons had come inside the shop. One of them had given a slap to Rajesh Arshid. After he fell down, the said person had assaulted him with knife. The principal accused was accompanied by four other persons.

4 The applicant herein was arrested on the ground that his name had surfaced in the course of investigation as one of the person, who had accompanied the other accused and to flee from the scene of offence, they had used motor cycle of the present applicant, which was recovered under section 27 of the Indian Evidence Act.

5 The earlier application filed by the present applicant was rejected by this Court (Coram : Smt. Sadhana S. Jadhav, J) on 29/10/2015. At that time also, learned Counsel for the applicant had contended that the test identification parade in the present case has not been held in accordance with the rules laid down in the criminal manual. Hence, it cannot be relied upon. Today also same contention has been raised. It is submitted by the learned counsel for the applicant that although the applicant has been identified by one of the witnesses, no specific role is attributed to him and therefore, the identification of the present applicant is futile. This Court had observed that Jitendra Shankulkar and Sapte had identified the present applicant. For the reasons assigned in the earlier application, it cannot be said that there is a change in circumstance to entertain the present application.

6 In fact, the learned APP has placed on record the roznama of Sessions Case No. 368 of 2014. It appears that the accused persons are protracting the trial on one or the other count. It is informed that

one of the accused has filed an application seeking discharge, which is pending before the Sessions Court.

7 The learned Counsel for the applicant submits that the change in circumstance is that on 26/2/2016 Jitendra Ramesh Taware @ Bunty was enlarged on bail by this Court. The learned Counsel submits that the role attributed to Jitendra was that he had actually entered the shop. The learned Counsel submits that the change of circumstance would be that the applicant would be entitled to bail by virtue of doctrine of parity since Jitendra Ramesh Taware has been enlarged on bail.

8 This Court had considered the papers of investigation earlier. It is admitted position that test identification parade is a corroborative piece of evidence and not a substantive piece of evidence. The fact that papers of investigation clearly indicated that the present applicant had accompanied the assailants and also helped them to flee from the spot after Rajesh Arshid was assaulted, would clearly

indicate that the applicant had knowledge that the principal assailant had entered into the shop only with an intention to kill Rajesh Arshid. The fact that he was armed with the weapon, called deceased outside the shop, upon denial had entered the shop and mounted assault, is sufficient to hold that the present applicant had shared common intention with the original accused No. 5 Santaji Gaikwad. There is no change of circumstance. Hence, the application deserves to be rejected.

9 The learned APP has placed on record the roznama which show that on 7/9/2016 and 19/9/2016 the present applicant alongwith original accused No. 5 was produced before the Court. However, the matter was adjourned. It appears that since the application seeking bail was pending, the matter was adjourned. In fact, pendency of any application in the High Court under Section 439 of the Code of Criminal Procedure, 1973 would not be an embargo on proceeding unless it is specifically stayed.

10 The learned Sessions Judge, seized with the Sessions Case No. 368 of 2014 shall proceed with framing of charge irrespective of the fact that discharge application filed by any other accused is pending.

11 The application being sans merits stands rejected and disposed of accordingly.

12 Office to communicate this order to the learned Sessions Judge, Court No. 41 forthwith.

(SMT. SADHANA S. JADHAV,J)