

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 850 OF 2016

Shri Sagar Ramesh Dhumal	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Prashant M. Patil, Advocate for the applicant.
Ms. Veera Shinde, APP, for the State.

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

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant is arrested on 25.11.2014 in Crime No.488 of 2014 registered at Bharti Vidyapeeth Police Station, Pune for the offences punishable under Sections 302, 307, 427, 120B read with Section 34 of the Indian Penal Code and under Section 3 read with Section 25 of the Indian Arms Act and under Sections 37(1), 135 of the Bombay Police Act.

2. It is the case of the prosecution that on 24.11.2014, Akash Maruti Zambare lodged a report at Bharti Vidyapeeth Police Station, alleging therein that on 24.11.2014, his cousin Nitin had called upon him and informed him that Rahul Tupe is going to sell 5 gunthas of land at

Handewadi and that he called him home. Thereafter, he had accompanied Nitin to Katraj. They were also accompanied by Ashutosh Pawar and Sudhir Zambare was driving the car. It is the case of the first informant that when they came to Mahavirnagar Katraj, Rahul Tupe had invited them for tea. They had been to his house and thereafter, Rahul Tupe was accompanied by two unknown persons. They had followed them on a motor-cycle. When they reached Datta Mandir, Rahul Tupe had proposed that they should take a break. At that stage, Rahul Tupe and Nitin Zambare had parted company with the first informant. They had walked upto a distance where suddenly there was an attack upon Nitin Zambare. Yogesh Holkar who was accompanying Nitin Zambare had mounted assault upon Nitin with a sickle and thereafter two unknown persons had also mounted assault upon Nitin with sickle. It is also alleged that Rahul Tupe had shot at Nitin with his revolver. Even after Nitin had collapsed on the ground, he was assaulted by Yogesh Holkar and Rahul Tupe. They had scared the first informant. Thereafter, they had caused damage to car. There was also an attempt to assault the first informant and his associates. Since Nitin was serious, he was taken to the hospital. On the basis of the said report, Crime No.488 of 2014 was registered against Rahul Tupe, Yogesh Holkar and two unknown persons.

3. The investigation is completed and charge-sheet is filed on 22.2.2015.

4. According to the prosecution, the two identified unknown persons who had accompanied Rahul Tupe at the time of incident were Sachin Balkrishna Tupe and the present applicant. It is pertinent to note that Sachin Tupe has been enlarged on bail.

5. The learned counsel for the applicant submits that the test identification parade was conducted on 3.2.2015 i.e. practically after more than two months after the applicant was arrested. The memorandum as well as the test identification parade report is not a part of the charge-sheet. The learned counsel, therefore, rightly submits that it can be inferred that the prosecution does not intend to rely upon the evidence in the form of test identification parade and therefore the same does not find place in the charge-sheet. A copy of the same has not been furnished to the accused.

6. Learned APP has placed on record the report of Test Identification Parade. Perused the memorandum of test identification parade which was conducted on 3.2.2015. It is pertinent to note that the memorandum would indicate that the test identification was conducted pursuant to the directions

of the Court. It is pertinent to note that at that stage, charge-sheet was not filed and therefore, it is not known as to at what stage and which Court had directed the investigating agency to conduct the test identification parade. In any case, the evidence in the form of the test identification parade is a corroborative piece of evidence.

7. It is pertinent to note that the statements of the eye-witnesses were recorded on 10.2.2015 after conducting the test identification parade. There is no reference to the identity of the unknown persons and alleged witnesses have continued to refer to two accused persons as unknown persons in their statement under Section 164 of Cr.P.C. This Court cannot be oblivious of the fact that Sachin Tupe, one of the accused, has been enlarged on bail. By virtue of doctrine of parity, the applicant would also be entitled to be enlarged on bail. However, the co-accused Rahul Tupe and Yogesh Holkar against whom there are specific allegations, shall not claim parity with the present applicant or with accused Sachin Tupe.

8. The observations herein are restricted to an application under Section 439 of Cr.P.C. and shall not be considered for the purpose of 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 furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall not visit or enter Holkarwadi till the conclusion of the trial.
- (iv) The applicant shall mark his presence before Bharti Vidyapeeth Police Station, Pune, on first Sunday of each month till the framing of charge.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)