

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 858 OF 2016

Bablu Lalsab Pitale	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U.Nikam, Advocate, for the applicant.
Mr. Y.M.Nakhwa, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 23rd September, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 9.3.2015 in Crime No. 56/2015 registered at Swargate Police Station, Pune, for the offences initially punishable under Section 307 read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 2.6.2015 against the applicant and co-accused for the offence punishable under Sections 302, 307 read with Section 34 of the IPC. The dead body of Kishore Gaikwad was found floating in a canal.

2. It is the case of the prosecution that on 9.3.2015, the complainant Dashrath Kakade had lodged a report at the police station

alleging therein that on 8.3.2015, he was in the company of Kishore Gaikwad and they both had consumed alcohol near a canal and thereafter had halted near the office of the Irrigation. There they met Pravin Shinde, Mohamed Pitale and one unknown person who was consuming alcohol. That the three persons left the spot and the first informant and Kishore Gaikwad continued to consume alcohol. At about 6.30 p.m. when they were returning home, at that time all the three persons i.e. Mohamed Pitale, Pravin Shinde and unknown person had returned to the spot. Kishore Gaikwad was acquainted with all the three persons. They had started quarreling. The first informant had attempted to pacify the quarrel. At that time, Mohamed Pitale, who happens to be the brother of the applicant, had called upon the applicant. The applicant is alleged to have reached the spot in his silver coloured Swift car within 10 minutes. At that time, Mohamed Pitale and his associates had allegedly informed the applicant that they had initiated the quarrel with the other 3 persons and thereafter the 3 persons and Mohamed Pitale had assaulted the complainant and Kishore Gaikwad with fist and kick blows and with stone. The first informant had also sustained injury on his forehead. He thereafter called upon his associates and they had come to the spot. Upon seeing the first informant and others, the accused persons

had fled from the spot and had proceeded towards Swargate. The first informant had left with them. They had called the firebrigade and had searched for the dead body of Kishore Gaikwad. That the dead body was not found on that day.

3. The learned counsel for the applicant submits that it is the case of the prosecution that Kishore Gaikwad was assaulted by all the accused with fist and kick blows and stone. The learned counsel for the applicant has drawn attention of this Court to the post-mortem notes. The post-mortem was conducted on the dead body of Kishore Gaikwad on 11.3.2015. It appears that Kishore Gaikwad had sustained a contusion on his right ear. The cause of death is injury on the head. According to the learned counsel for the applicant, it cannot be said that the accused persons, more particularly the present applicant, is responsible for the death of Kishore Gaikwad. The learned counsel for the applicant has also drawn attention of this Court to the CBI report and CDR to belie the allegations that he was called by Mohamed Pitale only to assist him to assault the deceased. It appears from the papers of investigation that there was a sudden quarrel between Mohamed Pitale and deceased Kishore Gaikwad under the influence

of alcohol. The applicant was not a party to the said dispute. The deceased as well as the brother of the applicant had quarreled. That the applicant was not armed with any weapon. The case of the applicant deserves to be distinguished. The role attributed to the applicant is different from the role attributed to Mohamed Pitale. The applicant deserves to be enlarged on bail.

4. The learned APP had fairly argued that the applicant has criminal antecedents and that in the year 2006, there are six cognizable offences registered against the applicant till 2014. It appears that the applicant has been charge sheeted for the offence punishable under Sections 324, 325, 326 read with Section 34 of the IPC. The learned APP also submits that knowing the antecedents and the nature of allegations made, his brother had called upon him to deal with the deceased. As on today, the applicant deserves to be enlarged on bail as it cannot be said that the applicant has committed offence under Section 302 of IPC. However, he has been held responsible for the offence punishable under Sections 201 and 109 of IPC.

The above observations are prima facie in nature and the Sessions Court shall not be influenced by the same 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 two sureties in the like amount.
- (iii) The applicant shall not enter into the Municipal limits of Pune City till the date of framing of charge.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)