

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

CRIMINAL BAIL APPLICATION NO. 859 OF 2016

Ajay @ Jimmy Uday Singh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 21, 2016**

P.C.:

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

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 2/11/2014 in Crime No. 502 of 2014 registered at Pimpri Police Station on 30/10/2014 for the offence punishable under section 302, 143, 147, 148, 149 of the Indian Penal Code and sections 37(1), 135 of the

Bombay Police Act and Section 4/25 of the Arms Act. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 30/10/2014 wife of deceased Rajesh Jadhav lodged report alleging therein that her husband Shri Rajesh Jadhav used to ply his own rickshaw. That his friends were Mahesh Chandanshive, Nikhil Sarode, Rahul Jadhav, Uday Ajay Sing, Arun Kamble, Salim Shaikh and Akash Magar. She was acquainted with all of them since they used to visit her house. Her husband had informed her that his friends named above used to threaten him that they would eliminate him. On 30/10/2014 at about 9.30 p.m. two boys namely, Ravi and Shekhar came to her house and informed her that her husband was quarelling with Mahesh Chandanshive, Nikhil Sarode and other friends including the present applicant and that the present applicant, Mahesh Chandanshive, Nikhil Sarode and Uday Ajay Sing are armed with scythe. She rushed to the spot and saw a crowd. Her husband was in injured condition. She learnt from the people gathered around that accused Mahesh

Chandanshive, Nikhil Sarode, Rahul Jadhav, present applicant and others had assaulted Rajesh and had fled away from the spot. There are eye witnesses. It is a case of direct evidence and therefore, the applicant does not deserve to be enlarged on bail.

4 The learned Counsel for the applicant submits that the role assigned to Mahesh Chandanshive is similar to the role assigned to the present applicant and Mahesh Chandanshive has been enlarged on bail by the Sessions Court. Perused the order passed by the learned Sessions Court. The accused Rahul Jadhav and Akash Magar have filed application under section 439 of the Code of Criminal Procedure, 1973 before the Sessions Court at Pune. The learned Sessions Court had observed that the eye witnesses have specifically stated that the said applicants were present with the co-accused. The said applicants were not armed with any deadly weapons, but the co-accused i.e. the present applicant and Mahesh Chandanshive etc. were armed with scythes and sticks. The learned Judge observed that presence of accused on the spot was not sufficient to hold them liable

under section 147, 148, 149 of the Indian Penal code as the possibility of being spectator cannot be ruled out.

5 It is pertinent to note that thereafter, the principal accused Mahesh Chandanshive has approached the Court of Sessions seeking enlargement on bail and the learned Sessions Judge had observed that investigation is completed and there is no recovery of any weapon from the accused and the co-accused with identical role has been enlarged on bail. Hence, the accused has been enlarged on bail.

6 It is pertinent to note that the other accused have been enlarged on bail by cryptic order passed by the learned Sessions Judge without assigning any reason and only holding that the co-accused had been enlarged on bail.

7 There is ocular evidence in the present case. The trial would become futile in the eventuality that the accused would be enlarged on bail. The learned APP also submits that he would take instructions

as to why the applications seeking cancellaton of bail have not been filed. Taking into consideration, the role assigned to the applicant and the papers of investigation, the applicant does not deserve to be enlarged on bail. Hence, the application being sans merits stands rejected.

8 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)