

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

CRIMINAL BAIL APPLICATION NO. 2143 OF 2016

Madan Mohan Dhamdere.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Kuldeep U. Nikam a/w. Mr. Chetan Nagare, advocate for Applicant.

Mr. Vinod Chate, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 22, 2016**

P.C.:

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

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 2/6/2016 in Crime No. 161 of 2016 registered at Sangvi Police Station, Pune for the offence punishable under section 395 r/w. 34 of Indian Penal

Code. Investigation is completed and charge-sheet is filed on 29/9/2016.

2 It is the case of the prosecution that on 29/5/2016 one Ghanraj Nathuram Aswani, who is the proprietor of Arvind Wine Shop, lodged a report at the police station alleging therein that on 27/5/2016 at about 11 p.m. some unknown persons had come to his shop and had demanded liquor. The said customer had disclosed that they are posted at Wakad Police Station and working as recovery staff and therefore, the shopkeeper should not take real price of the liquor. The first informant had obliged and had given a concession of Rs. 300/-. On 28/5/2016 at 11 p.m. 3 unknown persons had again come to the shop and had demanded liquor and had stated the same thing that they are recovery people. First informant told them that they would not be given a concession on subsequent day and therefore, there was quarrel and they had threatened him that they will see as to how he will open the shop tomorrow and has assaulted him with fist and kick blows. Thereafter, they had called somebody on the

cellphone and seen 4 to 5 person on two wheelers coming to the shop. He had not noted registration number of the motor cycle. They had assaulted the nephew of the first informant with stones and fist and kick blows and had also taken away Rs. 1,17,000/-, which he was carrying home and in the said altercation had also snatched his golden chain and Nokia cell phone. Crime No. 161 of 2016 was registered on the basis of the said report.

3 It is pertinent to note that persons who, had come to purchase liquor and has posed as police recovery officers are not an accused in the present case. The persons who were called by the police man have been made an accused. The first informant had specifically given the description and had stated that he would be able to identify them. However, no test identification parade is held. There is no recovery at the instance of the present applicant. It appears that there was a CCTV footage, which was seen and the first informant had identified the accused on the basis of the CCTV footage, which does not form part of the charge-sheet. The first person who had gone to

the scene of offence i.e. Vijay Kumar Bhimrao Bajantri, police constable attached to Hinjewadi Police Station had specifically stated that the first informant had not made any immediate disclosure to him. In any case, he was also a police constable and therefore, he appears to have saved the other police persons. It appears from the papers of investigation that the accused Amit Autade was apprehended at the spot of incident and in all probabilities, he has named all the co-accused. In the facts and circumstances of the case and upon perusing the papers of investigation, this Court is of the opinion that the applicant deserves to be enlarged on bail.

4 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.

5 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on first Sunday of each month till framing of charge.
- (iv) The applicant shall not tamper with the evidence.

6 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)