

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1146 OF 2016

1.	Vikas Rakmaji Dhende	)	
2.	Deepak Rakmaji Dhende	)	
3.	Santosh Kundlik Dhende	)	
4.	Balaji Kundlik Dhende	)...	Applicants
Vs.			
	The State of Maharashtra	...	Respondent

Mr. Jaydeep D. mane, Advocate for the applicant.

Mr. Vinod Chate, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 22nd December, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.

The applicants herein are arrested on 22nd and 23rd February, 2016 in Crime No.71 of 2016 registered at Karmala Police Station, Solapur for the offences punishable under Sections 302, 324, 341 read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 3.5.2016.

2. It is the case of the prosecution that on 21.2.2016, Pramod Dhende lodged a report at the police station alleging therein that the present applicants happen to be his cousins. His grandfather had transferred 22 Acres of land in his name and the applicants were enraged by the said fact. The father of the complainant had filed a complaint against the

present applicants and they were aggrieved by the same. It is alleged that on 20.2.2016, the complainant along with his brother were returning home on their motorcycle. On the way, the present applicants met them. All the applicants were driving two motor cycles. They obstructed the way, raised a quarrel and questioned the complainant and his brother as to why they were not getting share in the said land and thereafter they had mounted assault upon Ashok i.e. brother of the complainant. It is specifically alleged that the accused – Balaji and Deepak had assaulted Ashok with stones. Santosh and Vikas assaulted them with fist and kick blows. Ashok had sustained bleeding injuries to his head. He was taken to the hospital where he was declared dead.

3. Perused the papers of investigation, more particularly the post-mortem notes. It appears that deceased Ashok had sustained fractures, on mandible, one contused lacerated wound bone deep on the parietal region and a contusion with abrasion on left side of cheek. The cause of death is head injury.

4. Perused the statements of eye-witnesses who had reached the spot only after Ashok had fallen on the ground. The complainant has also

sustained simple injuries in the nature of contusion and abrasion. As far as the applicants Vikas and Santosh are concerned, they had assaulted Ashok with fist and kick blows.

5. The learned counsel for the applicants submits that the applicant Nos. 1 and 3 did not share any common intention. That applicant Nos. 2 and 4 who had picked up the stone lying closeby and assaulted Ashok. According to the learned counsel for the applicant, there was a family dispute. There was no premeditation to cause homicidal death of Ashok. According to the learned counsel, when the applicants had confronted with the complainant and deceased Ashok, there was an altercation and on the spur of moment, applicant Nos. 2 and 4 had picked up the stone and assaulted Ashok.

6. The learned APP submits that the applicants do not deserve bail as they are residents of the same village as that of the complainant and they are close relatives. The possibility of tampering the evidence cannot be ruled out.

7. Taking into consideration the papers of investigation and the specific role attributed to the applicant Nos. 1 and 2, prima facie, it appears

that they had assaulted Ashok with fist and kick blows and had not anticipated that the applicant Nos. 2 and 4 would pick up the stone and assault Ashok. Hence, applicant Nos. 1 and 3 deserve to be enlarged on bail. However, applicant Nos. 2 and 4 are not entitled for grant of bail.

8. The above observations 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 partly allowed.
- (ii) The applicant No.1 - Vikas Rakmaji Dhende and applicant No.3 - Santosh Kundlik Dhende be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.
- (iii) Bail application of applicant No.2 - Deepak Rakmaji Dhende and applicant No.4 - Balaji Kundlik Dhende is rejected.
- (iv) The applicants shall not reside in Village Bhalwani till conclusion of the trial.

The application is partly allowed in the above terms and stands disposed of.

(SMT. SADHANA S.JADHAV, J.)