

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL BAIL APPLICATION NO. 1222 OF 2016**

|                          |     |            |
|--------------------------|-----|------------|
| Dadu Sakharam Udare      | ... | Applicant  |
| Vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

Mr. Aniket U. Nikam, Advocate for the applicant.

Mr. R.M. Pethe, APP, for the State.

Mr. Gorakh Theurkar, P.H. Pimpri Police Station present.

**CORAM: SMT. SADHANA S. JADHAV, J.**

**DATE : 14th October, 2016.**

**P.C.**

1. Leave to amend.

2.. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 24.3.2015 in Crime No.175 of 2015 registered at Pimpri Police Station, Pune, initially for the offence punishable under Section 324 of IPC. The investigation is completed and charge-sheet is filed. The applicant herein is charge-sheeted for the offence punishable under Section 302 read with Section 34 of IPC.

2. It is the case of the prosecution that on 15.3.2015, one Smt.

Vimal Gangawane lodged a report alleging therein that on 14.3.2015, after having dinner, her son Sandeep had left the house just for a stroll. Soon thereafter, she had heard the noise of a quarrel outside her house. She peeped outside and she saw Dadu Udare (the present applicant) and his brother Sakharam Udare assaulting her son. She rushed out. Upon seeing her, the assailants had left the spot. She had seen them assaulting her son with wooden logs. She enquired with her son about the cause of assault and he had disclosed to her that the accused were insisting upon him to treat them with liquor. He denied to oblige and therefore he was assaulted. Soon thereafter, with the help of neighbours, her son Sandeep was admitted in YCM Hospital. He had become unconscious while he was taking treatment. Upon medical advice, the injured was shifted to Max Hospital.

3. The papers of investigation would show that the supplementary statement of the complainant was recorded in which she had implicated the mother of the accused persons. The mother has been granted pre-arrest bail by this Court.

4. On 16.3.2015, the statement of one Nilesh Khilare was recorded and, according to him, he was an eye-witness to the incident

where Sandeep was assaulted by the present applicant. There were other witnesses also who have stated that they had seen Sandeep being assaulted by the present applicant.

5. It is pertinent to note that the statement of the eye-witness was recorded under Section 164 of Cr.P.C. The statement of witness Sachin Khilare was recorded under Section 164(5) of Cr.P.C. wherein he has resiled from the earlier statement. Similarly, Nilesh Khilare has also resiled from the statement under Section 164 of Cr.P.C. and has stated that he along with Sachin had seen Sandeep after he had collapsed on the ground. He has not attributed any act to the present applicant. The residents of the said area have refused to pose as eye-witnesses for the reasons best known to them. At that time, the applicant was in custody.

6. It is pertinent to note that the injured had undergone Craniotomy at Max Neuro Hospital on 16.3.2015. He was unconscious. he was discharged from the hospital against medical advice and was once again taken to YCM Hospital at Pimpri Chinchwad. The Summary of the Case issued by YCM Hospital reads as follows :-

“Date of admission 29/03/2015.  
A/H/o assault on 14/3/15.  
Craniotomy done on 16/3/15 for parietal EDH midline shift.  
Patient was unconscious since admission. The patient had  
succumbed to the injuries on 1.4.2015 at 8 a.m.”

7. The learned counsel for the applicant rightly submits that the copy of the post-mortem note does not find place in the compilation of the charge-sheet. The investigating officer is present in the Court.

8. The learned APP submits that he has no instructions as to why the post-mortem notes do not find place in the charge-sheet. However, the same is placed before this Court for perusal. Column No.17 of post mortem notes shows that 10 sutures were given over parietal occipital region.

9. It appears that the possibility of medical intervenion being the cause of death cannot be ruled out at this stage. The compilation of the charge sheet does not show that the statements of the doctors who had performed Craniotomy was recorded in the course of investigation and therefore as on today, it would not be proper to substitute the medical opinion. Be that as it may, the alleged eye-witnesses have resiled from their statements recorded under Section 164 of Cr.P.C. and therefore the only evidence is that of the complainant.

10. The learned counsel for the applicant submits that the

statements of the neighbour would reveal that the complainant had reached the spot after the incident had occurred and she had only seen the present applicant. It is also submitted that it is a thickly populated area. The applicant is also resident of the same place and therefore their presence at the scene of offence cannot be doubted.

11. Taking into consideration the fact that the co-accused had been enlarged on bail by this Court, the applicant on the facts of the case as well as by virtue of doctrine of parity, would be entitled to enlargement of bail.

12. The observations are prima facie in nature and cannot be considered at the time 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.25,000/- with one or more sureties in the like amount.

Application stands disposed of.

**(SMT.SADHANA S.JADHAV, J.)**