

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

CRIMINAL BAIL APPLICATION NO. 1252 OF 2016

Mahesh Gyanba Bhilare.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Sachin Thombare, advocate for Applicant.

Mr. Hrishi Ghorpade i/b. Mr. S.H. Nimbalkar, advocate for intervenor.

Mr. Vinod Chate, APP for State.

Mr. Vishal B. Nagare, PC, Rajgad Police Station, Pune (Gramin).

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 13, 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 3/2/2013 in Crime No. 14 of 2013 registered at Rajgad Police Station initially for

offence punishable under Section 307 read with Section 34 of the Indian Penal Code. The investigation is completed and the applicant is charge-sheeted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 1/2/2013 Bharat Kerba Wadkar lodged a report at the police station alleging therein that he is working in the fire brigade department of Pune Municipal Corporation. That Santosh Dhanawade was his childhood friend. On 1/2/2013 the first informant was in the company of Santosh Dhanawade. That Santosh Dhanawade had insisted upon the first informant to drop him at Bhilarewadi. The complainant had taken him as pillion driver. They were followed by a car which has dashed them from the rear side. That both had fallen down. Thereafter, 4 to 5 person had alighted from the said car. They had told the first informant to leave the spot forthwith and thereafter they had mounted assault upon Santosh. The first informant had informed the brother of Santosh namely, Shekhar, that Santosh has been attacked by unknown

person. It appears that injured Santosh had succumbed to the injuries on the same day and hence, section 302 of the Indian Penal Code was added.

4 The learned Counsel for the applicant submits that the prosecution has arrested the present applicant only on suspicion. There was no foundation for his arrest. It is submitted that in the course of investigation, initially name of the applicant was not mentioned and hence, there was no reason to arrest the present applicant. It is also submitted that co-accused have been enlarged on bail by the Sessions Court and therefore, the applicant deserves to be enlarged on bail by virtue of doctrine of parity.

5 The learned APP submits that the applicant has been identified in the test identification parade. It is also submitted that on 5/2/2015 there was recovery under section 27 of the Indian Evidence Act, at the behest of the present applicant. The statements of the witnesses have been recorded under section 164 of the Code of Criminal

Procedure, 1973, which clearly shows that the applicant had planned the assault. That he had got the weapons made from the blacksmith. That there are eye witnesses to the incident. The assault was brutal in nature. The post mortem notes also clearly indicates that the cause of death is the injuries sustained by the victim. There are more than sufficient incriminating material against the applicant. It was a premeditated assault.

6 The learned counsel for the applicant submits that in fact, the applicant had no motive to cause the homicidal death of the deceased Santosh. The learned Counsel submits that the test identification parade was not conducted as per the rules contemplated in the criminal manual and that the applicant deserves benefit of doubt at this state.

7 In fact, the evidence in the nature of test identification parade is only a corroborative piece of evidence. That the statement of the eye witness, which is recorded under Section 164 of the Code of Criminal

Procedure, 1973 cannot be brushed aside lightly as ocular evidence would prevail over any other form of evidence. Hence, the applicant does not deserve to be enlarged on bail. 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)