

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1317 OF 2016

Shri Abhijeet Rajendra Sawant	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Mr. Subir Sarkar, Advocate for the applicant.

Mr.S.S.Pednekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 15th November, 2016.

P.C.

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

The applicant herein is arrested on 3.6.2013 in Crime No.118 of 2013 registered at Shahupuri Police Station, District Kolhapur for the offences punishable under Sections 302, 307, 323, 504, 506, 109, read with Section 34 of the Indian Penal Code and Section 25(1)(3) of the Indian Arms Act. The investigation is completed and charge sheet is filed on 30.8.2013.

2. The applicant had earlier filed an application seeking enlargement of bail. The said application was rejected by this Court

(Coram: A.R.Joshi, J.) on 20.3.2015. At that juncture, the Hon'ble Court was of the opinion that the earlier Bail Application bearing No.1892 of 2013 was withdrawn and that there was no change in circumstances for filing the subsequent application.

3. The learned APP, at the outset, submits that as on today also there is no change in circumstances and therefore, the application deserves to be rejected. The Court cannot be oblivious of the fact that the applicant has been in custody for almost three years and as on today, charge has not been framed. The applicant has been charge-sheeted mainly with the aid of Section 109 of the Indian Penal Code.

4. It is the case of the prosecution that on 24.5.2013, one Ravindra Gaikwad had been to a Pan stall along with his cousin. They had purchased some snacks. That when he was returning he had seen the applicant at the pan stall along with his unknown friend. That a wrapper of the said snack had fallen on the ground. It appears that the applicant was attempting to pick up the said wrapper, he was restrained by the complainant and over the said issue, there was a trifling quarrel between the complainant and the applicant. It is further alleged that the unknown

friend of the present applicant had also attempted to pacify the quarrel between the applicant and the complainant. It is also alleged that thereafter the complainant had gone to his house. He had informed his father and other members of the family about the incident which had taken place in front of the pan-shop and quarrel between the complainant and the present applicant. They had returned to the pan stall again and there they had seen the applicant along with his unknown friend. According to the complainant, the applicant had hurled abuses at the complainant. At that time, the brother of the complainant had intervened and had requested the applicant not to abuse the complainant. The quarrel had taken an ugly turn. According to the prosecution, after that the applicant had called upon his father and brother at the scene of offence. In the afternoon, the father and brother of the applicant had allegedly reached the spot. There was a scuffle. That the applicant had exhorted his father to take some action against the complainant and at that time, the father of the applicant had fired his revolver. The victim had missed the shot. At that time, the brother of the complainant had intervened. The father of the applicant had again fired the shots which hit the brother of the complainant namely Hemant Gaikwad and he had collapsed on the ground immediately.

5. The papers of investigation would clearly indicate that the role attributed to the applicant is that he had exhorted his father to take action against the complainant. Besides this, he has no active role. The learned Senior Counsel submits that in a fit of rage, he had requested his father not to spare the complainant, but at that stage, he neither had knowledge nor intention to eliminate the complainant or his brother and that his father had fired the shots. It is pertinent to note that the father of the applicant is enlarged on bail on medical ground. Similarly, the brother of the applicant has also been enlarged on bail. The driver who was driving the car of the father of the applicant has also been enlarged on bail.

6. It is pertinent to note that the investigating agency has not been able to trace the identity of the star witness i.e. the friend of the applicant.

7. Upon perusing the papers of investigation and upon hearing the learned senior counsel, the applicant who was hardly 18/19 years old at the time of incident, deserves to be enlarged on bail. The active role is played only by the father of the applicant. It cannot be said that the exhortation has resulted into action and hence the applicant deserves to be enlarged on bail.

7. It is made clear that the observations made hereinabove are prima facie in nature and 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 allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount.

Application is allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)