

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

CRI. BAIL APPLICATION NO. 1391 OF 2016

Mr. Suraj Rajendra Sutar ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Ms. Subhangi Parulekar, Advocate, with Mr. Ravindra S. Pachundkar, Advocate for the Applicant.

Mrs. Veera Shinde, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 09th AUGUST, 2016

P.C. :

1 The applicant/accused in Crime No. 54 of 2013 registered with Paud Police Station, Pune for the offences punishable under sections 302, 341, 294, 506 r/w. 34 of the Indian Penal Code at the instance of informant-Bhagwan Gavade, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. She argued that statement of alleged eye witness-Datta is inconsistent and it is not naming the present applicant. She argued that in fact Datta is not an eye witness to the incident in question. According to the learned counsel

for the applicant, Datta is the younger brother of deceased-Baban. Datta had named one Rahul Padalghare as one of the assailants of deceased-Baban. Said Rahul, as seen from the chargesheet is near relatives of witness-Datta as well as informant-Bhagwan, who is father of Datta and deceased Baban. With this, learned counsel for the applicant argued that Datta, the alleged eye witness, would not have named Rahul Padalghare as one of the assailants when he was well aware that Rahul Padalghare is near relative. Learned counsel further argued that except so-called test identification parade, there is no evidence worth mentioning which will incriminate the present applicant in the crime in question.

3 Learned APP opposed the application by contending that the applicant was identified as one of the assailants by the eye witness -Datta and the offence alleged is serious.

4 Perused the chargesheet. According to the prosecution case because of previous enmity co-accused Mahesh Balasaheb Gavade has murdered the informant's son Baban on 11.03.2013 by assaulting Baban along with his associates including the present applicant.

5 The report of informant-Bhagwan is based on the information given to him by his son Datta, who is alleged eye

witness. Eye witness-Datta in his first statement dated 11.03.2013 had stated that when he alongwith Baban (since deceased) were proceeding on a motorcycle, co-accused - Mahesh Gavade, Monny Nakate and Rahul Padalghare and one unknown person came by motorcycles and intercepted the motorcycle of the deceased. Thereafter, they assaulted Baban by means of sharp edged weapons. In his supplementary statement dated 22.02.2013 alleged eye witness Datta had stated that police arrested co-accused persons viz. Mahesh Gavade, Sanny Chougule and Monny Nakate and that these accused persons told the police that Rahul Padalghare was not accompanying them but through oversight Rahul was named as on the assailants. In other words, this was the information given to alleged eye witness - Datta by the police.

6 The present applicant is stated to be absconding accused. The trial against co-accused is already proceeding on. Evidence of Datta is recorded in Sessions Case No. 522 of 2013. Perusal of the evidence of Datta shows that he has referred 4th accused as unknown person.

7 Prima facie, it appears that except the alleged identification of the applicant by the eye witness - Datta that too after three years, there is no evidence worth mentioning to incriminate the present applicant in the crime in question.

Inconsistent version of the alleged eye witness Datta will have to be viewed in that context.

8 Considering the nature of the evidence against the present applicant his pre-trial detention as such is not warranted and therefore, the following order :

ORDER

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 54 of 2013 registered with Paud Police Station, Pune for the offences punishable under sections 302, 341, 294, 506 r/w. 34 of the Indian Penal Code at the instance of informant-Bhagwan Gavade, be released on bail on executing PR Bond in the sum of Rs. 15,000/- and on furnishing solvent surety in the like amount.
- iii. As a condition of this order, the Applicant should co-operate with the trial court in expeditious disposal of the trial.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.

- v. The applicant should not commit any offence of similar nature in future.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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