

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

CRIMINAL BAIL APPLICATION NO. 1788 OF 2016

Vinod Kumar Shrikrishankumar Dahiya. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 1987 OF 2016

Anil Kumar Shivsahay Sharma. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Ms. Sabina Sethi, advocate for Applicant in BA 1788/16.

Mr. S.V. Marwadi i/b. Mr. Omkar Nagwekar, advocate for applicant in BA 1987/16.

Mr. Prashant Jadhav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : NOVEMBER 16, 2016

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP
for State. Perused the papers.

2 These are applications under Section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 4/2/2015 in Crime No. 12 of 2015 registered at MIDC Gokul Shirgaon Police Station initially for an offence punishable under Section 326, 504 read with Section 34 of the Indian Penal Code. But injured Sanjay Desai had succumbed to the injuries on 4/2/2015 and thereafter, section 302 of Indian Penal Code has been added.

3 It is the case of the prosecution that on 1/2/2015 Sanjay Desai was admitted in CPR Hospital, Kolhapur, as he had sustained injuries. It prima facie appeared to be a medico legal case and therefore, the statement of the injured was recorded by the ASI of MIDC Gokul Shirgaon MIDC Police Station on 1/2/2015. The injured had disclosed to the police that he is working as steward in Suhas India Private Ltd. which is situated at Five Star MIDC. He is working in the canteen. That on 31/1/2015 the owner of the canteen namely, Sanjay Lakhan had taken Sanjay Desai in his omni van. They had completed the work and thereafter, returned to the canteen. Sanjay Lakhan questioned as

to why he has raised issue of his payment. Initially, he was abused. Thereafter, Sanjay Lakhan assaulted him with stick on his head and on both the legs. At that time, the present applicants were present. They had also assaulted Sanjay Desai with stick. It is alleged that Vinodkumar had assaulted with stick whereas Anilkumar assaulted him with belt on his legs and other parts of the body. The other servants had seen Sanjay Desai in an injured condition and had taken him to the hospital.

4 The papers of investigation included in the charge-sheet would show that he was admitted in the hospital on 1/2/2015 at 4 p.m. and had succumbed to the injuries on 4/2/2015 at 4.30 a.m. By way of amendment, the medical case papers are placed on record in Criminal Application No. 1987 of 2016. The case papers would indicate that on 31/1/2015 at about 4.20 p.m. the injured Sanjay Desai was admitted in the hospital with head injury and fracture on left leg and was referred for surgical and ortho management. The medical case record would show that the injured was admitted in the hospital on 1/2/2015

at about 1.30 a.m. and was admitted in the ward. The principal diagnosis was fracture of tibia and fracture of arm, left ulna and multiple abrasions with abdominal injuries.

5 The learned Counsel for the applicant has placed reliance on the medical case record, especially the history recorded on 1/2/2015 which shows alleged history of assault on 30/1/2015 at 8 p.m. upon hand, left leg etc. The learned Counsel vehemently submits that Sanjay was already injured on 30/1/2015 and yet he has stated in his statement that he was assaulted on 31/1/2015. This Court cannot be oblivious of the fact that there is over writing in the date and time mentioned in the history dated 1/2/2015, which would clearly show that 31/1/2015 is converted to 30/1/2015 and 4 p.m. is overwritten as 8 p.m. It is true that the accused may not have access to the case papers at that stage. And therefore, the learned Counsel for the applicant seeks to take advantage of the same.

6 The learned APP rightly submits that in fact, the date and time have been scored of and the accused cannot take advantage of the lacunas in the case papers at this stage, as specific overt act is attributed to the applicants.

7 Initial registration of case papers would show that the patient was taken to the hospital on 31/1/2015 at 4.20 p.m. There is no overwriting and therefore, the learned Counsel for the applicant submits that Sanjay Desai was already injured on 31/1/2015 at 4.20 p.m. and therefore, the story that he was assaulted at about 3.20 p.m. on that day would stand falsified. This is the matter of evidence to be adduced by the prosecution at the time of trial and need not be considered at the time of consideration of application for bail. Upon perusal of the post mortem notes, it appears that the injured Sanjay Desai had sustained as many as 7 injuries. There are four abrasions on the arms and legs. Sutured wounds on the parietal region, contusion at right lower leg. Injury No. 7 is puncture mark over right forearm, anterior middle third fracture of distal end of left ulna. It appears that

there was hemorrhage. The cause of death is complications following multiple injuries.

8 The statement of injured Sanjay Desai could be read under section 32 of the Indian Evidence Act. He has specifically stated that the present applicants had assaulted him with stick and leather belt. At that stage, it cannot be said that they had any intention to cause homicidal death of deceased Sanjay Desai. Initially offence was registered under section 326 of the Indian Penal Code. The principal accused Sanjay Lakhan has been enlarged on temporary bail on medical ground, which is extended from time to time since April, 2016. Taking into consideration the statement of the injured and the injury certificate as well as the post mortem notes, this Court is of the opinion the applicant deserves to be enlarged on bail. However, accused Sanjay Lakhan shall not claim parity with the present applicants.

9 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.

10 Hence, following order is passed :

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or more solvent sureties in the like amount.
- (iii) The applicants shall not leave Kolhapur without prior permission of Sessions Court.
- (iv) The applicants shall report to MIDC Gokul Shirgaon Police station on 1st Sunday of each month till framing of charge.
- (v) The applicants shall not tamper with the evidence.

11 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)