

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1849 OF 2016

Vikas Bhau Kadam	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

WITH
CRIMINAL APPLICATION NO. 820 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 1849 OF 2016

Sham Hemant Rasal	Applicant
In the matter between:	

Vikas Bhau Kadam	Applicant/Accused
vs.	
The State of Maharashtra	Respondent

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute, Advocate for the applicant.
Mr. Kuldeep Patil i/b. Mr. Shailesh D. Chavan, Advocate for the Intervener.
Mr. Prashant Jadhav, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 20th December, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 13.12.2015 in Crime No.187 of 2015
registered at Lonavala Rural Police Station on 7.12.2015. The
investigation is completed and charge-sheet is filed on 3.3.2016 against the

applicant for the offences punishable under Sections 302, 307, 120B ,201 read with Section 34 of the Indian Penal Code, and under Section 4 read with Section 27 of the Indian Arms Act.

2. It is the case of the prosecution that on 7.12.2015 that Shyam Hemant Rasal lodged a report at the police station alleging therein that he happened to be the cousin of Dattatray Ravikant Rasal. It is further alleged that the cousin of the first informant Dattatraya was on inimical terms with Ashok Rajiwade, resident of Ambegaon. It is alleged that Ashok Rajiwade threatened Dattatraya on several occasions of dire consequences. Dattatraya had apprehended danger at the hands of Rajiwade brothers. It is also alleged that Dattatraya had levelled allegations against Ashok Rajiwade. On 6.12.2015, Dattatraya was driving as a pillion driver on the motor-cycle of Lahu Shelke and they were proceeding towards Ambegaon. Some people had assaulted him with deadly weapons and had caused his homicidal death.

3. Perused the papers of investigation.

4. It appears that all the material witnesses had specifically

named Rajiwade brothers and had stated that at the time of incident, a Maruti 800 Car was following on the road. That Lahu Shelke and Dattatraya had proceeded on the motorcycle. An Esteem Car which was being driven by their friends had stopped and Rajiwade brothers had assaulted Dattatray brutally. Lahu was also assaulted. That the witnesses reached the spot. They saw Rajiwade brothers boarding the car and **some** unknown persons fleeing away on the motor cycle with deadly weapons.

5. The learned APP submits that the present applicant happens to be one of the unknown persons and that he was subsequently identified. In the present case, first information report was filed on 7.12.2016. Charge sheet was filed on 3.3.2016 and the applicant was arrested on 13.12.2016 and was put for test identification parade on 22.4.2016.

6. The papers of investigation would show that the test identification parade of the witnesses was not conducted within 90 days i.e. prior to filing of the charge sheet. For the first time it was conducted on 22.4.2016. Perused the memorandum of the T.I. parade conducted on 22.4.2016, wherein Lahu Maruti Shelke was called upon to identify the two

unknown persons. That at the time of test identification parade, the present applicant and Vijay Kalekar stated before the Tahsidlar that there is no .. in the test identification parade if they are to be identified by Lahu for the simple reason that after they were arrested, Lahu was also taken into custody on the next day and that from 8.12.2015 to 24.12.2015, they were in the same cell and therefore, Lahu is acquainted with them. The Tahsildar had confronted Lahu with the said contention. Lahu had admitted the same and thereafter the T.I. parade as against the present applicant was required to be called off.

7. The second identification parade was held on 6.5.2016 i.e. practically more than 5 months after the arrest of the applicant. The witness who was called upon to identify the accused were Mohan Ghardale, resident of Ambegaon. He had allegedly identified the persons whom he had seen fleeing from the spot after he reached the place where Dattatraya was assaulted. It is not the case of the witness that at that time the present applicant was armed with any weapons.

8. The next witness Kishan Bidkar has not identified the present applicant. Perused the papers of investigation. It is pertinent to note that

initially, the police had also suspected the involvement of Lahu as he had admitted before the Tehsildar he was an accused with accused Nos. 1 and 2. It is further pertinent to note that according to the witnesses, the assailants had followed them in Maruti 800 Car and on a motorcycle. The registration of the vehicle numbers were not given. In the course of investigation, the investigating agency has not taken any steps to even determine the ownership of the car with the RTO authorities. Be that as it may, according to the prosecution, they had seen the present applicant fleeing from the spot. The applicant had no enmity with Dattatraya. According to the prosecution, the present applicant happens to be a good friend of Bunti Rajiwade and therefore he has committed the said act to aid and facilitate Bunti Rajiwade to eliminate Dattatraya. It is true that the evidence in the nature of test identification is a corroborative piece of evidence. As on today, the investigating agency has no plausible explanation as to why the accused were not put to test identification parade before the charge sheet was filed. There is a delay in conducting the test identification parade. It is in these circumstances that the applicant deserves to be enlarged on bail.

9. It is made clear that none of the other accused shall claim

parity with the present applicant. The above observations 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 his furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report to the Lonavala Rural Police Station on first Sunday of each month till framing of charge.
- (iv) The applicant shall not reside in Maval Taluka for a period of six months.

The application is disposed of.

10. The Intervention Application is heard, allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)