

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1865 OF 2016

1)	Smt. Thakubai Mohan Kale	)	
2)	Smt. Sundarabai Shivdas Kale	)	
	@ Sumanbai Shivdas Gaikwad	)..Applicants	
	Vs.		
	The State of Maharashtra	...	Respondent

Mr. Ashish S. Sawant, Advocate for the applicant.
Mr. Prashant Jadhav, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 13th December, 2016.

P.C.

Hard. This is an application under Section 439 of Cr.P.C. The learned counsel for the applicant, at the outset, upon instructions from the son of the applicant No.1, seeks liberty to withdraw the application as far as applicant No.2 is concerned. Hence, the application as far as applicant No.2 is concerned stands dismissed as withdrawn.

2. Applicant No.1 – Thakubai is arested on 13.5.2016 in Crime No.113 of 2015 registered at Ambad Police station, District Nashik. The investigation is completed and charge sheet is filed on 8.8.2016.

3. The learned counsel for the applicant has placed on record the photocopy of the Aadhar Card of applicant No.1, which is verified with the original Aadhar Card which shows that the year of birth of the applicant No.1 is 1945. The learned counsel vehemently submits that the applicant No.1 is a woman, old and infirm and while in jail also she is suffering from old age ailments and, therefore, prays for bail.

4. The learned APP submits that the Investigating agency has verified the genuineness of the Aadhar Card submitted through the learned counsel for the applicant and it is clear that it is a genuine Aadhar Card.

5. It is the case of the prosecution that on 12.5.2016, Dilip Dandekar lodged a report at the police station alleging therein that in the month of April, 2016 there was a quarrel between Dandekar family and the family of the present applicant and his sister-in-law namely Sunita had lodged a report of the incident at the police station. The said accused persons were arrested and were in jail. According to the first informant, on 12.5.2016, he along with Ashok and Tatya had been to purchase alcohol. At that time, Pappu Kale had come in his own rickshaw along with Anil, Thakubai i.e. applicant No.1, Mohan, Sunderbai and Sampat Gaikwad and some other unknown persons. They had started hurling abuses at them and thereafter they had assaulted them with the weapons. According to the first

informant, all the male members had assaulted Ashok and Tatya who had succumbed to the injuries. Even after they had fallen to the ground, the present applicant No.1 had thrown a stone on the head of Ashok and applicant No.2 had thrown a stone on the head of Tatya. There are eye-witnesses to the said incident. It is clear that the first informant is an eye-witness to the incident. The learned counsel for the applicant has vehemently argued that the conduct of the first informant would not inspire the confidence as he was watching the said incident as a silent spectator and had neither attempted to rescue nor intervene.

6. As against this, the learned APP submits that it appears from the record that the first informant was scared of the accused persons as they were large in number and he was apprehending danger. Be that as it may, it appears from the papers of investigation that Ashok and Tatya were initially assaulted by all the male members accompanying the present applicant and thereafter she had thrown a stone on the head of Ashok.

7. Taking into consideration the age of the applicant No.1 and the fact that she is suffering from old age ailments in jail, she deserves to be enlarged on bail. It is made clear that none of the co-accused shall claim

parity with the present applicant.

8. The 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 furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called.

(SMT. SADHANA S.JADHAV, J.)