

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

CRIMINAL BAIL APPLICATION NO. 1953 OF 2016

Mahesh Namdev Botre. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Satyavrat Joshi, advocate for Applicant.

Mr. V.M. Kumbhar, Police Havildar, Chakan Police Station, Pune (Gramin).

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 26, 2016**

P.C.:

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

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 23/12/2015 in Crime No. 690 of 2015 registered at Chakan Police Station on 18/12/2015. The investigation is completed and the applicant is

charge-sheeted for offence punishable under section 302 and 120B of the Indian Penal Code.

2 It is the case of the prosecution that on 18/12/2015 Amol Anil Londhe lodged a report at the police station alleging therein that on 18/12/2015 at about 5.30 p.m. he alongwith Harshal was on the motor cycle of Harshal going towards Mhalunge village to meet the mother of Harshal. Harshal was driving the motor cycle and the complainant was the pillion rider. When they came near Samaj Mandir, they met the mother of Harshal, who asked them to come at Mhalunge Phata. The first informant and Harshal were proceeding towards Mhalunge Phata. After covering some distance, a white colour WagonR car followed them and gave them dash. Harshal had fallen down. At that time, four persons had alighted from the said car. Two of them were Dhanesh @ Dam Temkar and Abhid Shaikh. All the four persons were armed with deadly weapons. They were threatening Harshal for becoming a witness in Crime No. 614 of 2015. They mounted assault on Harshal. The first informant rushed to the

house of Sunny Walke and informed him about the incident. The mother and sister of Harshal as well as Pradip Shinde etc. had reached the spot and upon seeing them the assailants had fled in the WagonR car. The first informant had given registration number of the car as M 12 FF 6497.

3 The learned Counsel for the applicant submits that the co-accused who were not named in the FIR and were not identified in the test identification parade have been enlarged on bail and hence, the learned Counsel for the applicant prays that the applicant be enlarged on bail by virtue of doctrine of parity.

4 The learned APP submits that the applicant herein has been identified by the mother of the deceased. The learned Counsel for the applicant submits that the mother of the deceased can not said to be an eye witness because she has specifically reached the scene of offence and had not seen the actual assault.

5 The learned APP submits that on 21/12/2015 i.e. 2 days prior to the arrest of the applicant, investigating officer had recorded the statement of one Abhijit Amrale, who had disclosed to the police that on 15/12/2015 when he had gone for strolling after dinner. He had heard present applicant, Abhid Shaikh, Dam Temkar and other 15 persons, who were hatching conspiracy to eliminate Harshal on the ground that Harshal was willing to become an approver in the Crime No. 614 of 2015. It appears that thereafter, the applicant was arrested on 23/12/2015.

6 It is pertinent to note that the car of which registration number is given in the first report is owned by the present applicant. The conspiracy between the actual assailants and the present applicant is writ large on the face of the record, as incriminating material was found in the car. From 18/12/2015 to 23/12/2015 the applicant had not stated to anybody that his car was taken by his brother or anybody else on 18/12/2015. There is more than sufficient incriminating material against the applicant and hence, the applicant

is not entitled to be enlarged on bail by virtue of doctrine of parity.

The application being sans merits stands rejected.

7 However, 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.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)