

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

CRIMINAL BAIL APPLICATION NO. 1979 OF 2016

Timma @ Timanna Barma Lashkre. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. C.D. Konale, advocate for applicant.

Mr. R.M. Pethe, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : NOVEMBER 29, 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 23/2/2016 in

Crime No. 66 of 2016 registered at Hinjewadi Police Station for offence punishable under section 302, 504 read with section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 19/5/2016.

3 It is the case of the prosecution that on 23/2/2016 one Shetiba Timma Lashkare lodged the report at the police station alleging therein that he was residing alongwith his parents and brother Ramesh. Ramesh is working on crusher of Meriland Developer. He was engaged by Timma Chavan. Ramesh had not returned home for almost four days. It is reported that on 23/2/2016 Timma Chavan and Timma Lashkare i.e. the present applicant alongwith 2 to 3 people had brought Ramesh in their tempo to home. Ramesh has sustained bleeding injury to his head. Upon enquiry made with him, he has informed that he had also sustained injury on his thigh. It was clear that he had sustained grievous injury. Upon enquiry, he had disclosed that when he was at Hinjewadi, Timma

Lashkar i.e. the present applicant and Timma Chavan were staying with him. The present applicant had asked him to serve food. Ramesh had got annoyed with the same and there was trifling quarrel between both of them. It appears that the said quarrel has taken an ugly turn. They had assaulted each other. It is stated in the first information report itself that the applicant herein had also sustained injuries. That first informant had taken Ramesh to Shivrana Police Station. He had informed the police about the same. Upon requisition of the police, Ramesh was sent to Sassoon Hospital. He was declared dead at the time of admission.

4 The learned Counsel for the applicant submits that there was premeditation. The statement in the first information report can be read under section 32 of the Indian Evidence Act, as an oral dying declaration of Ramesh would indicate that the incident had taken place in a fit of rage. There was grave and sudden provocation.

5 It is pertinent to note that the compilation of the charge-sheet does not include the post mortem notes for the best known to the investigating agency. On perusal of the statement of one Isaq Pathan, it appears that Timma i.e. the present applicant had also sustained injuries. However, the injury certificate of the applicant also does not find place in the charge-sheet.

6 Taking into consideration the papers of investigation, the oral dying declaration of the deceased Ramesh and the fact that incomplete charge-sheet has been filed against the accused, this Court is inclined to grant bail.

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 Hence following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- and one or more local solvent sureties in the like amount.
- (iii) The applicant shall report to Hinjewadi Police Station on 1st and 3rd Sunday of each month till framing of charge.
- (iv) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)