

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

CRIMINAL BAIL APPLICATION NO. 2004 OF 2016

Amol @ Mangesh Ankush Lande.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Ms. Anjali Patil, advocate for Applicant.

Mr. Prashant Patil, advocate for complainant.

Mr. S.H. Yadav, APP for State.

Mr. Yogesh Avhad, API, Bhosari Police Station, Pune.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 15, 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 29/2/2015 in Crime No. 66 of 2015 registered at Bhosari Police Station initially for offence punishable under Section 307 read with 143, 147, 148, 149 of

the Indian Penal Code. The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 27/2/2015 Ms. Poornima, daughter of Anil Barne lodged a report at the police station contending therein that she is studying in 9th standard. That her father is an agriculturist and her uncle Sunil looks after their dairy business. It is alleged that there is a long standing quarrel between the family members of the present applicant and her grand-father and grand-mother. There was also civil dispute pending between them. According to the complainant, Balasaheb, Ankush and Jalinder Lande were encroaching upon the agricultural land. That on 27/2/2015 at about 11.30 a.m. there was dispute between the family of the applicant i.e. the applicant himself, Nilesh and Jalinder Lande and the father of the complainant on the issue of stocking of fodder at particular place. Her mother had pacified the quarrel. That her uncle had returned home. To enquire into the said dispute, he had come into the courtyard and at that time, wife of Jalinder and wife of

Ankush had thrown chilly powder in the eyes of Sunil and at that time, the present applicant, Nilesh and others had assaulted Sunil with iron rod and pipes. Her uncle Sunil had fallen on the ground. He was taken to hospital. He succumbed to the said injury on the same day i.e. 27/2/2015.

4 It is a matter of record that on 27/2/2015 itself, the applicant had also lodged the report at the police station against the deceased Sunil in respect of the same incident. He had stated in the first information report that on 27/2/2015 when he was unloading fodder in the open place next to the house, elder son of Sayaji Barne i.e. Anil Barne and his wife were obstructing the same. Sunil was in close proximity. Sunil started hurling abuses at the applicant. Sunil was armed with an axe. There was verbal altercation between Sunil and the applicant and that the applicant was indicating that his name also appears in 7/12 extracts. That Sunil got enraged with it and had assaulted the applicant with axe on his forearms. The applicant had rushed to his own house. Sunil followed him. He had climbed on the

roof of his aunt. He had taken chilly powder from the house and as soon as Sunil appeared before him, he had thrown chilly powder in the eyes of Sunil. The applicant had apprehended danger and had therefore, snatched the axe from the hands of Sunil and had assaulted on his head and thereafter, his uncle Jalinder came to the spot with iron rod and he had assaulted Sunil. Anil was also armed with sickle and therefore, the applicant had fled from the spot. Crime No. 67 of 2015 was registered against only Sunil. But since he has expired, the offence stands abated as against Sunil.

5 Upon perusal of the injury certificate of the applicant, it appears that he had sustained laceration over the right forearm which was deep muscle cut and injury on his elbow also. The injuries mentioned substantiated with the history given by the applicant. The deceased would have been prosecuted for an offence punishable under section 326 of the Indian Penal Code.

6 The learned Counsel for the applicant submits that the applicant was a young boy of hardly 20 years at the time of the incident. The first information report lodged by the applicant is truthful and genuine and that he had admitted, that he had assaulted Sunil in apprehension and by way of private defence. He has also stated that thereafter his uncle Jalinder had come to the spot armed with deadly weapons like iron rod. According to the learned Counsel for the applicant, the applicant had sustained grievous injury on his forearm and elbow and that there were 17 sutures given to the applicant on the site of the injuries and therefore, according to the learned Counsel, the applicant deserves to be enlarged on bail. Moreover, there were intermittent quarrels between both the families and it had taken serious turn on the date of the incident i.e. 27/2/2015. In any case, the prosecution would have to explain the injuries on the person of the accused sustained by him at the time of the incident, as they are not superficial injuries but deep injuries.

7 The learned Counsel appearing for the original complainant submits that column 17 of the post mortem notes would indicate that the deceased had sustained serious injuries on his head and they were as many as 6 contused lacerated wound on the head itself and therefore, the applicant does not deserve to be enlarged on bail.

8 It is true that the act committed by the present applicant was not a pre-meditated act. He had sustained injuries and had also initiated prosecution against the deceased. Taking into consideration the papers of investigation, more particularly, the report lodged by the applicant alongwith his injury certificate and the submissions advanced across the bar, the applicant deserves to be enlarged on bail.

9 However, it is made clear that the co-accused shall not claim parity with the present applicant, as they had taken undue advantage of the situation. Co-accused had seen the applicant assaulting Sunil and thereafter, there was no reason for them to assault the deceased

with deadly weapons like iron rod and iron bars. It is in this circumstance that the co-accused cannot claim parity with the applicant who had stated in the FIR that he was extremely scared when Sunil had rushed towards him with the axe. He tried to escape from the clutches of Sunil, but Sunil had followed him up to his house and he has acted in self defence. The same parameters cannot be applied to the co-accused.

10 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 while deciding the application for discharge or quashing of FIR or at the time of trial.

11 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.50,000/- and one or more sureties in the like amount.
- (iii) The applicant shall not enter into Lande Vasti, Kasarwadi, Pune till conclusion of the trial.
- (iv) The applicant shall not tamper with the evidence.

12 The application stands disposed of on the above terms.

(SMT. SADHANA S. JADHAV,J)