

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

CRIMINAL BAIL APPLICATION NO. 2105 OF 2016

1 Dinesh Suresh Koli.
2 Pujesh Harishchandra Patel.
3 Premnath Bhagwan Thakoor. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kuldeep S. Patil, advocate for Applicants.

Mr. Prashant Jadhav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 17, 2016**

P.C.:

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

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. Learned Counsel for the applicant does not press the application of applicant No. 2. Liberty to file an application afresh after filing of charge-sheet. It is made clear that the application of the applicant No. 2 is not heard on merits. The learned Court shall not be

influenced by the withdrawal of this application as far as applicant No. 2 is concerned.

3 As far as applicant Nos. 1 and 3 are concerned, the applicants are arrested on 1/10/2016 in Crime No. 300 of 2016 registered at Kharghar Police Station for offence punishable under Section 324, 323, 504 read with Section 34 of the Indian Penal Code.

4 It is the case of the prosecution that on 19/9/2016 Kiran Anant Kamble lodged a report at the police station alleging therein that on 19/9/2016 at about midnight he had gone to attend function at the house of Ramchandra Koli. He had met Dinesh Koli and Pujesh Patel in the said programme. It is alleged that the applicants had referred to his caste as he belongs to Chambhar community. That the applicants were annoyed with the said and had assaulted him. It is specifically alleged that the applicant No. 2 had assaulted the complainant with an iron punch. The learned Counsel for the applicants rightly submits that there was no premeditation. The

incident had occurred on the spur of the moment. That the applicant had no animosity against the complainant.

5 Perused the papers of investigation, more particularly, the medical case papers, which shows that the complainant had sustained multiple abrasions over the face at left side and injuries on his nasal bone. It appears that there was a fracture on the nasal bone, which was caused by the iron punch. The applicants are in custody.

6 The learned APP submits that the very fact that the applicant No. 2 was armed with the punch, he had intention to assault. However, the same cannot be inferred at this stage as the learned APP submits that the investigation is almost completed and charge-sheet would be filed within two weeks from today.

7 In view of the above observations and the nature of allegations, the applicants deserves to be enlarged on bail.

8 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.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed as far as applicant Nos. 1 and 3 are concerned.
- (ii) The applicant Nos. 1 and 3 be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each and one or two sureties in the like amount.
- (iii) The applicant Nos. 1 and 3 shall report to the police station as and when called only after issuing notice under section 160 of the Code of Criminal Procedure, 1973.
- (iv) The applicants shall not tamper with the evidence.

(v) The application of the applicant No. 2 is not pressed and hence, dismissed as withdrawn with liberty to file afresh after filing of charge-sheet.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)