

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2262 OF 2016

Kumar Yallappa Gangpol

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Nikhil Shivalkar i/b Paras Yadav Advocate for Applicant.

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

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 28th NOVEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 01/10/2014 in crime no. 193 of 2014 registered at Rajarampuri Police Station, Kolhapur for offence punishable under sections 302, 307, 452, 143, 147, 148, 149, 323, 504 of the Indian Penal Code.

2) It is the case of the prosecution that on 26/09/2014, Imtiyaz Shaikh lodged a report at the police station alleging therein that on 25/09/2014, the complainant and his friends had been to celebrate Durga Utsav in Salokhe Park area. There was a triffling quarrel amongst the boys as they had clashed

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against each other when they were dancing. The parents of the complainant had been to the place and had pleaded apology before Vikram Bandiwadekar. The other persons had also intervened and pacified the quarrel. On 26/09/2014, the complainant and his cousin Irfan were at the grocery shop of Dilawar Mulla. At about 6.30 p.m. to 7.00 p.m., Vikram Bandiwadekar along with present applicant, the cousin of the present applicant and others had gone to the said grocery shop. They were armed with deadly weapons. They had mounted assault upon Irfan. It is alleged that Vikram had assaulted Irfan on his chest with a sword and the others had also followed Vikram. As far as the present applicant is concerned, it is the case of the complainant that he had mounted the assault upon the complainant with a sword, he had wielded the said blow. His mother had attempted to snatch the said sword and in the said altercation, she had sustained injuries. The complainant could rescue himself with great efforts and had fled from the spot, however, Irfan was assaulted by the unlawful assembly and Irfan had succumbed to the said injuries immediately i.e. on the same day.

3) Coloumn no. 17 of the post-mortem notes would show that the deceased Irfan had sustained more than 5 incised wounds on vital parts of his

body. The cause of death is “*Haemorrhagic shock due to stab injury over right side of chest causing injury to lung*”.

4) The learned counsel for the applicant submits that the applicant herein deserves to be enlarged on bail on the ground that he had not assaulted the deceased, but even according to the complainant, he had attempted to assault the complainant himself who had wielded the said blow. According to the learned counsel for the applicant, there are discrepancies in the statements of the eye witnesses and the other eye witnesses have not attributed specific role to the applicant as alleged by the complainant.

5) As against this, the learned APP submits that the applicant was a member of unlawful assembly, he was armed with a deadly weapon like a sword, he had shared a common object with Vikram Bandiwadekar to eliminate Irfan and therefore he does not deserve to be enlarged on bail.

6) Upon perusal of the statement of witness Irshad Mulla who happens to be the brother of the deceased, it is clear that the incident of 26/09/2014, had not taken place only because of the trifling quarrel on the preceding day, but according to him, 4 years prior to the alleged incident, Irfan had a quarrel with Vikas Devkar & Sunny Sale there was a quarrel between them. A

criminal case was registered. Deceased Irfan was an eye witness in the said case. On 26/09/2014, Irfan attended the Court on that day and when he was returning home, he was assaulted by the unlawful assembly of which the present applicant was a member. It was a pre-meditated act on the part of the accused/applicant who happens to be associate of Vikas Devkar and Sunny Sale. It is further clear that on the date of the incident, Imtiaz had informed the Irfan that the boys belonging to the rival group have come near the shop of Dilawar Mulla to assault Irfan.

7) Taking into consideration the papers of investigation, the role attributed to the present applicant coupled with the fact that the applicant was a member of the unlawful assembly and had shared common object with Vikram Bandiwadekar by mounting assault upon the complainant, applicant does not deserve to be enlarged on bail.

8) Hence, application being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)