

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2311 OF 2015

Vijay Kashinath Kadwe .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

Mr. Fakruddin Khan, Advocate for the applicant.

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

Mr.Ram V. Pote, API from Sahar Police Station, Mumbai.

CORAM : PN. DESHMUKH, J.

DATED : 8th JUNE 2016

P.C. :

1 Heard Mr.Fakruddin Khan, learned counsel for the applicant. Heard Mr.S.H.Yadav, learned APP for the State.

2 Applicant is seeking bail in Crime No.181/15 registered by Sahar Police Station for the offences punishable under section 307 IPC, 504 IPC r/w section 34 of the IPC. Charge-sheet is filed. According to the learned counsel for the applicant, this is the first application before this Court for grant of bail.

3 Perused the documents made available by the learned APP. It appears that application is arising out of crime registered,

as aforesaid, on the basis of report lodged by one Amit. It further appears that on the basis of counter report lodged by the present applicant Vijay, crime No.182/15 is registered against Amit who is the complainant in Crime No.181/15.

4 It is not disputed that the accused involved in the counter case registered on the basis of report lodged by applicant, are released on bail, though there is one co-accused in the said crime who is stated to be absconding.

5 In the set of above facts, on perusal of FIR, it appears that the incident took place in the night of 25th May 2015. Prior to the incident in the midnight at around 2.00 am, applicant along with Amit and others were consuming alcohol (beer) near Marol Pipe line bridge, when there happened to be some exchange of words between the applicant and complainant Amit and others, and in the course of same transaction, applicant committed assault by a sharp weapon on the abdomen, due to which Amit sustained injuries. Co-accused, who are involved in this case, along with the present applicant are admittedly released on bail by the Sessions Court.

6 Perused the injury report of Amit Tambe dated 25th May 2015 who is certified to have sustained '*Incised wound from left lower Lateral aspect of chest upto left flank deep wound*' which is certified to be '*grievous injury*'. Except for this, no other injuries are found on the person of the injured. On perusal of further documents, it appears that the alleged history of assault given by the injured Amit is that he came to be assaulted by one known

person in Lele Wadi, Marol Pipe line by sharp object about half an hour before. From the contents of the FIR, as aforesaid, it appears that applicant along with Amit were in fact, consuming liquor and were known to each other. In spite of that, Amit has not disclosed the name of the applicant as the assailant though claims to have knowledge of the person who has committed the assault.

7 On perusal of documents in counter case registered vide Crime No.182/15 registered on the basis of the report lodged by the present applicant, injury report of injured therein, i.e. Vijay who is the applicant who is found to have sustained incised wound of about 2.5 cms on his abdomen. The applicant too has not given name of his assailants while giving history of assault, but stated that he is assaulted by knife.

8 Having considering documents, as aforesaid, and undisputedly since co-accused Santosh Kadve, Amit are also released on bail by the trial Court, and on further considering the fact that accused in counter case are also released on bail, there is no reason to reject the present application, more so when it is also found that though according to the contents of the FIR, the incident has been witnessed by one Vikrant and Siddharth Kamble who were also named in the FIR as eye witnesses of the incident which took place in the night of 25th May 2015. Their statements are recorded on 15th June 2016. No explanation could be tendered by the prosecution for recording statements of these two material eye witnesses after a long gap of about 20 days in spite of their names being referred in FIR as eye witnesses.

9 Having considered the facts, as aforesaid, application is allowed as per order below.

ORDER

10 Application is allowed.

11 Applicant shall be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one surety in like amount or two sureties in the sum of Rs.25,000/- each.

12 While on bail, the applicant shall not tamper with the evidence, and shall mark his presence with the Sahar Police Station on 15th day of each month initially for 6(six) months, and thereafter, once in 3(three) months, pending trial.

(PN. DESHMUKH, J)