

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2355 OF 2016

Pradeep Ashok Ahire

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Satyavrat Joshi 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 the Code of Criminal Procedure, 1973. Applicant herein is arrested on 11/04/2015 in crime no. 121 of 2015 registered at Chaturshrungi Police Station for offence punishable under section 302, 323, 506 r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 09/04/2015, Prashant @ Munna Maruti Devkar lodged a report at the police station alleging therein that he is working with a garage near Chaturshrungi temple. On 08/04/2015, after 4.00 p.m., his friend Sudhir Duggal came to the garage along with his friend Rajesh Raut and two other friends. They had brought liquor along with them.

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They asked the complainant to permit them to consume liquor in the garage as the owner of the garage was not present. The first informant had closed his garage at 7.00 p.m. and had gone home. In the meanwhile, he had learnt that his friend Nilesh was admitted in the hospital and therefore, he had been to the hospital. He could not meet his friend and his parents there. In the early hours of 09/04/2015, at about 3.45 a.m., he had been to the garage. There he saw Sudhir, Rajesh and two other friends were still consuming alcohol. They had offered the same to the complainant. At the garage, there was an altercation between all four friends who were under the influence of alcohol. Complainant had intervened to pacify, however, he was also threatened by Sudhir and others. Three persons were assaulting their 4th friend whose identity was not known to the complainant. Sudhir had assaulted the complainant also with fist and kick blows. When the complainant realized that the situation was not under control, he gave a call on “100” and called the police. In the meanwhile, Sudhir, Rajesh and the unknown friend had fled from the spot. One of their friend was lying on the spot in an injured condition. Upon inspection, the identity of the deceased was established. He was Rakesh Kadam, resident of Aundh. On the basis of report crime no. 121

of 2015 was registered against the applicant. Statements of two eye witnesses were recorded who have reiterated the narration given by the complainant. They did not know the present applicant.

3) On 11/04/2015, a memorandum under section 27 of the Indian Evidence Act was recorded of Sudhir Duggal and in the said memorandum, he had disclosed that the present applicant had also accompanied them on the unfateful day. It appears from the papers of investigation that on the basis of the revelations made in the memorandum under section 27 of the Indian Evidence Act, applicant was arrested on 11/04/2015.

4) The learned counsel for the applicant submits that no specific role is attributed to the present applicant. It is also argued that as far as Sudhir Duggal is concerned, they had picked up stones lying nearby and assaulted the deceased. The cause of death of Rakesh is also head injury which appears to be a crush injury. There is no doubt that the present applicant was in the company of Sudhir Duggal and the deceased at the time when the incident had occurred. It was not a pre-meditated act. There was a quarrel between Sudhir and deceased and thereafter, Sudhir and Rajesh Raut had assaulted the deceased with the stones lying nearby.

5) The learned APP submits that applicant has been identified in the test identification parade and the witnesses have clearly stated that the applicant was in the company of Sudhir Duggal at the relevant time and was consuming alcohol.

6) Taking into consideration the papers of investigation, role attributed to the present applicant and the submissions advanced across the board, applicant deserves to be enlarged on bail. However, it is made clear that the observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall not enter into the jurisdiction of Chaturshrungi Police Station, Pune till the conclusion of the trial.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)