

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

CRIMINAL BAIL APPLICATION NO.2398 OF 2016

Gorakhnath Maruti Kadam.

.....Applicant

V/s.

The State of Maharashtra.

....Respondent

...

Mr. Subir Sarkar, Advocate for Applicant.

Mr. Rajan Salvi, APP for the State.

....

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 16th DECEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Cr.P.C. Applicant herein is arrested on 13.06.2016 in Crime No.131 of 2016. The investigation is completed and charge sheet is filed on 08.09.2016 against the applicant and others for the offences punishable under sections 302, 307, 326, 323, 109 read with section 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 13.06.2016, Mohan Pandurang Kadam lodged a report with the Police Station alleging therein

that the present applicant happens to be his first paternal cousin. Six months prior to the incident there was quarreled between the present applicant and the father of the first informant namely Pandurang Kadam in respect of the allocation of their ancestral property. It is revealed that on 12.06.2016, his father Pandurang Kadam has left house with Shahji Patil on in a Bolera Truck. On 13.06.2016 Shahji Patil came home and informed Mohan that his father has been assaulted and therefore he has been taken to Civil Hospital at Sangli. Mohan rushed to the Civil Hospital. He saw that his father has succumbed to the injuries. According to the first informant, he suspected Gorakhnath Maruti Kadam i.e. the present applicant to be the assailant of his father since he had quarreled with his father six months prior to the incident. On the basis of the said record, Crime No.131/2016 was registered at Sangali Police Station against the applicant and he was arrested.

3) The compilation of the charge sheet revealed that there is an eye witness to the said incident and i.e. Uday Kulkarni. He has narrated the incident dated 12.10.2016 as follows:

“ That Uday Kulkarni, Pandurang Kadam and Prakash

Koli had had met the present applicant in garage. The present applicant had asked his uncle about partition and possession, at that time Dashrath Shelar was present and he has also raised quarrel with Pandurang Kadam stating therein that he has also return the encroached land belonging to the Dashrath Shelar. There was quarreled between them and thereafter they returned for sleep. In the midst of the night, Uday Kulkarni has seen Dashrath Shelar and and Sanjay Kamble.”

The statement is recorded on 07.07.2016.

4) Learned counsel for the applicant rightly submits that besides the material that the applicant had met the deceased on the relevant day. There is no material or evidence remotely connected the applicant with the offence punishable under section 302 of IPC.

5) Learned APP submits that the possibility that Sanjay Kamble had taken up the cause of the applicant cannot be ruled out. As on today, there is no material or evidence to the fact that at the time when Dashrath Shelar and Sanjay Kamble had assaulted Gorkhnath Kadam was not seen in the close proximity of the place where incident had taken place. There

are other eye witnesses also who have categorically stated that Pandurang was assaulted by two persons. In view of this, the applicant deserves to be enlarged on bail.

6) The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR. 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. 50,000/- with one or more solvent sureties in the like amount.

(iii) The co-accused Dashrath Shelar and Sanjay Kamble shall not claim parity with the present applicants as there are specific overt acts attributed to them.

(iv) Application is allowed in above terms and stands disposed of.

(SMT. SADHANA S. JADHAV, J.)